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

KAROLINA OBRYCKA,	)	
	)	07 C 2372
Plaintiff,	)	
	)	Judge St. Eve
vs.	)	
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

DEFENDANT CITY OF CHICAGO'S RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS

Defendant City of Chicago for its Response to Plaintiff's Statement of Additional Facts states as follows:

1. On February 19,2007, Anthony Abbate, a 12-plus year veteran patrolman of the Chicago Police Department, was in Jesse's Shortstop Inn at 5425 W. Belmont Avenue, Chicago, Illinois, and started a fight with a patron, Mike Muellner - it was after 3:00pm. Exhibit D, p.l2, L.20 - p.13, L.24; **Exhibit C**, at City 00189. Abbate approached this individual, began to shout and swear at him, then threw him to the ground. **Exhibit D**, p. 14, L.16 - p.17, L.5; **Exhibit A** (Folder 0645-0745, at subfolder 070302_094236, at 06:20 - 07:20 of files US_ch0l_0702200715 - 0702200745 and US_ch02_0702200715 - 0702200745)'; **Exhibit A-1; Exhibit F, ¶¶**3-6; **Exhibit H, ¶¶** 1-4. Patti Chiriboga, Abbate's friend for about 15 years who knew Abbate was a Chicago police officer, was the bartender at the time and didn't call the police. **Exhibit A** (Id); **Exhibit D**, p.I6, L.21 - p.I8, L.7. She just told him she would not serve him any alcohol, and he left. **Id.**

ANSWER: The City admits that On February 19, 2007, Anthony Abbate, a 12-plus year veteran patrolman of the Chicago Police Department, was in Jesse's Shortstop Inn at 5425 W. Belmont Avenue, Chicago, Illinois, and started a fight with a patron, Mike Muellner - it was after 3:00 p.m. The City admits that Abbate approached this individual, began to shout and swear at him, then threw him to the ground.

The City admits that Patti Chiriboga was the bartender at the time, but denies that she was Abbate's friend for about 15 years, that she knew Abbate was a Chicago police officer, and that she did not call the police, insofar as these statements are not supported by the record citations. The City admits that Chiriboga told Abbate she would not serve him any alcohol and he left the bar, but denies that her actions are properly qualified as "just"; "just" implies that she told Abbate to leave the bar rather than calling the police, which the record does not establish. The City objects to plaintiff's Fact No. 1 as irrelevant, insofar as Abbate's involvement in a physical altercation with another person hours before the beating of Obrycka is not probative of any issue raised on summary judgment.

2. Some 4 hours later, Anthony Abbate returned to the same bar at approximately 8:05 p.m. **Exhibit B** (Folder 1, subfolder 1, at 28:10 of Camera 2); **Exhibit C**, at City 00192; Plaintiffs Statement of Additional Facts, herein at 3, sub and fn2 (hereinafter "PSAF, _"). This time, the Plaintiff, Karolina Obrycka, was the bartender. **Exhibit I,** p.I46, L.I9 - p.I55, L.5. As the night went on, Abbate became more physically abusive; at one point, he postured with his arm raised, biceps flexed, and exclaimed "Chicago Police Department" while forcefully elbowing Jimmy Passera with the same arm (**Exhibit B** (Folder 1, subfolder 2, at 17:20 - 17:30 of Camera 2)); later, he forcefully punched Jimmy Passera in the ribs, knocked his hat off multiple times, put him in a headlock, repeated his "Chicago Police Department" pose numerous times, and generally threatened, harassed and physically abused Passera for nearly a half-hour. Exhibit B (Folder 1, subfolder 2, at 22:55 - 23:00; 29:25 - 29:45; 30:25 - 30:40 of Camera 2; Folder 2, subfolder 1, at 00:25 - 00:40, 04:25 - 04:35, 06:30 - 06:42, 07:48 - 08:00, 10:20 - 10:30, 10:45 _ 11:30,14:20 - 14:30, 14:55 - 15:03, 18:25 - 18:40,20:50 - 21:15, 21:50 - 22:05, 26:30 - 26:45, 29:35 - 29:40 of Camera 2; and Folder 2, subfolder 2, at 02: 10 - 02: 15,07:55 - 08:20, 15:15 _ 15:25). During this time, Passera moved around to the other side of the bar, away from Abbate. **Exhibit B** (Folder 2, subfolder 1, at 15:40 - 15:15 of Camera 2). After a short period, Abbate then ran around toward Passera, who ran away from Abbate into the bartender side of the bar, but Karolina directed Passera to go back out. **Exhibit B** (Folder 2, subfolder 1, at 22: 10 - 22:30 of Camera 2).

ANSWER: The City admits that some four hours later, Anthony Abbate returned to the same bar at approximately 8:05 p.m. The City admits that this time, the plaintiff,

Karolina Obrycka was the bartender. The City denies that as the night went on, Abbate became more physically abusive. Plaintiff's use of the phrase "as the night went on" is a vague and overbroad characterization of the temporal scope of the events depicted in the cited portions of the surveillance video. In addition, plaintiff's description of Abbate's actions as becoming "more physically abusive" contains an unnecessary adverb and adjective that are improper in a statement of facts. *See Kleban v. S.Y.S. Restaurant Mgmt. Inc.*, 994 F.Supp. 932, 935-36 (N.D.Ill. 1998). The City also denies that at one point, Abbate postured with his arm raised, biceps flexed, and exclaimed "Chicago Police Department" while forcefully elbowing Jimmy Passera with the same arm. "Posture," "exclaim," and "forcefully elbowing" are argumentative language and contain an unnecessary adverb that are improper in a statement of facts. *See id.*. Accordingly, the City admits that the evidence relied upon by plaintiff demonstrates that at one point during the night while in Jesse's Shortstop Inn, Abbate raised his arms and stated, "Chicago Police Department," and then used his right elbow to touch Passera's arm. The City admits that later, Abbate knocked Jimmy Passera's hat off multiple times and put him in a headlock. The City denies that later Abbate repeated his "Chicago Police Department" pose numerous times, and generally threatened, harassed and physically abused Passera for nearly a half-hour. "Pose," "threaten," "harass" and "physically abuse" are argumentative language that is improper in a statement of facts. *See id.* Moreover, plaintiff's characterization of Abbate engaging in a "Chicago Police Department pose" is argumentative, and is not

supported by the record citations. There is no evidence that the flexing of biceps constitutes a "Chicago Police Department pose"; therefore, this phrase should be disregarded. *See Zaborowski v. Dart*, 2011 WL 6660999, at *1 (N.D.Ill., Dec. 20, 2011) ("The Court may disregard statements and responses that do not properly cite to the record."). Finally, Plaintiff's assertion that only the described events occurred for the entire "half-hour" is not supported by the evidence relied upon by Plaintiff, and should be disregarded. *See id.* Accordingly, the City admits that the evidence relied upon by plaintiff demonstrates that Abbate knocked Passera's hat off; Abbate then rubs the Passera's hat and head with his right hand.; Abbate claps his hands while singing, and then places his left arm around Passera's shoulders; Abbate touches his right bicep with his left hand in front of Plaintiff; Abbate flexes his right bicep once and pats Passera on his back; Abbate removes Passera's hat from his head and puts it back on Passera's head; Abbate puts Passera in a headlock once and punches him three times to Passera's side; Plaintiff describes Abbate interaction while hitting Passera as "it looked like for fun"; Abbate points to his left and right biceps in front of Plaintiff; Abbate points to his right bicep in front of Plaintiff; Abbate flexes both biceps in front of Plaintiff; Abbate flexes his right bicep in front of Plaintiff several times; and Abbate takes a shot with two men and flexes his right bicep. The City admits that during this time, Passera moved around to the other side of the bar, away from Abbate. The City admits that after a short period, Abbate ran toward Passera, but denies that after a short period, Passera ran away from Abbate into the bartender

side of the bar, insofar as the evidence relied upon by plaintiff demonstrates that Passera walked away from Abbate into the bartender's area of the bar. The City admits that plaintiff directed Passera to go back out. The City objects to plaintiff's Fact No. 2 as irrelevant, insofar as the conduct of Abbate therein described is not probative of any issue raised on summary judgment.

3. For the next 23 minutes, Passera managed to avoid Abbate, until Abbate finally walked around the back side of the bar into the bartender area towards Passera. **Exhibit B** (Folder 2, subfolder 2, at 16:10 of Camera 2). The Plaintiff bravely confronted Abbate, a man easily twice her size, and pushed him back the direction he came. **Exhibit B** (Folder 2, subfolder 2, at 16: 15 - 16:25 of Camera 2). Abbate continued his now numerous repeated "Chicago Police Department" biceps flex-poses to the Plaintiff and Passera. **Exhibit B** (Folder 2, subfolder 2, at 16:40 - 17:25 of Camera 2). Abbate then went after Passera again the same way, walking behind the bar, and the Plaintiff again tried to stop him. **Exhibit B** (Folder 2, subfolder 2, at 17:40 of Camera 2). At approximately 9:26 p.m, Abbate savagely beat Karolina Obrycka, while proclaiming to her "nobody tells me what to do." Exhibit **B** (Folder 2, subfolder 2, at 17:40 _ 18:20 of Cameras 1 and 2); **Exhibit C**, at City 00238; **Exhibit F**, at ¶2; PSAF, ¶4;sub.

ANSWER: The City denies that for the next 23 minutes, Passera managed to avoid Abbate, insofar as plaintiff cites to a single time frame of the surveillance video to support activity that purportedly happened in a 23-minute time period. *See id. I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2D 912, 916 (N.D. Ill., 2009) (citations omitted) (noting that a statement of facts must contain "only factual allegations, supported by specific references to exact pieces of the record that support the factual contention contained in the paragraph"). In addition, the City objects to Plaintiff's use of the verb "avoid" as language which indicates opinion, which is improper in a Rule 56.1 statement of additional facts. *See Kleban v. S.Y.S. Restaurant Mgmt., Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998). Accordingly, the City admits that at the single time frame of the video recording

cited by Plaintiff, there was no interaction between Passera and Abbate. The City denies that Plaintiff bravely confronted Abbate, a man easily twice her size. Plaintiff's assertions that "Plaintiff bravely confronted Abbate" and that Abbate is "a man easily twice her size" contain unnecessary adjectives, adverbs, and other language that indicate opinion. *Id.* The City admits that the evidence relied upon by plaintiff demonstrates plaintiff pushed Abbate back the direction he came. The City denies that Abbate continued his now numerous repeated "Chicago Police Department" biceps flex-poses. The City objects to plaintiff's use of the phrase "his now numerous repeated 'Chicago Police Department' biceps flex-poses" as it contains unnecessary language which indicates opinion. *Id.* The City admits that the evidence relied upon by plaintiff demonstrates that Abbate flexed his muscles to Plaintiff and Passera. The City denies that Abbate walked behind the bar to go after Passera again, insofar as it is unclear whether Abbate went behind the bar area in order to go after Passera again, and insofar as plaintiff cites to a single time frame of the surveillance video to support activity that purportedly happened over a period of time. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2D 912, 916 (N.D. Ill., 2009) (citations omitted) (noting that a statement of facts must contain "only factual allegations, supported by specific references to exact pieces of the record that support the factual contention contained in the paragraph"). The City admits that the evidence relied upon by plaintiff demonstrates that Abbate walked behind the bar and that Plaintiff again tried to stop him. The City admits that Abbate beat Karolina Obrycka, while stating to

her "no one will tell me what to do." The City objects to Plaintiff's use of the word "savagely" as it is an unnecessary adverb that indicates opinion. *See Kleban v. S.Y.S. Restaurant Mgmt. Inc*., 994 F. Supp. 936 (N.D. Ill. 1998).

4. Abbate then walked out of the bar. **Exhibit B** (Folder 2, subfolder 2, at 18:40 _ 18:47 of Camera 2). The Plaintiff immediately called 911 from the bar telephone at 9:26:30 p.m. **Exhibit B (**Folder 2, subfolder 2, at 18:38 of Cameras 1,2 and 3)2; **Exhibit E**. During the 911 call, Karolina relayed that the offender's name was Tony, and Passera is audible in the background identifying Abbate and that he is a Chicago Police Officer. **Exhibit E** (W A V _95, at 01:27 - 01:47); **Exhibit B** (Folder 2, subfolder 2, at 19:50 to 19:58 Cameras 1,2 and 3); Exhibit C, at City 00302; **Exhibit F**, at ¶¶3-6. All of this information was disregarded by the 911 operator, as she only asked whether it was a boyfriend / girlfriend disagreement. **Exhibit E**. None of the material information about Anthony Abbate and his employment was passed on to the dispatcher. **Exhibit E** (W A V _98, at 00:00 to 00:27).

ANSWER: The City admits that Abbate walked out of the bar after attacking Obrycka. The City admits plaintiff called 911 from the bar telephone about 9:26:30 and that during that call the plaintiff relayed that the offender's name was Tony. The City admits the 911 dispatcher asked if the situation was a boyfriend/girlfriend disagreement. The City denies that the record cited supports the statement "Passera is audible in the background identifying Abbate and that he is a Chicago Police Officer." The City denies that the record cited supports the statement that "All of this information was disregarded by the 911 operator, as she only asked whether it was a boyfriend/girlfriend disagreement." The record cited does not establish whether the 911 dispatcher heard or understood any information about Abbate's last name or employment. Moreover, the City objects to plaintiff's use of the verb "disregarded" as language that indicates opinion, which is improper in a Rule 56.1 statement of additional facts. *See Kleban v. S.Y.S. Restaurant Mgmt.,*

Inc., 994 F. Supp. 932, 935-36 (N.D. Ill. 1998). The City denies that the record supports that the information referred to was "material." Plaintiff's use of the verb "disregarded" is language that is argumentative and indicates opinion, which is improper in a Rule 56.1 statement of additional facts. *See id*. The City objects to plaintiff's Fact No. 4 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

5. Peter Masheimer and Jerry Knickrehm, veteran 25th District patrolmen, arrived at Jesse's Shortstop Inn and made immediate contact with the Plaintiff at approximately 9:34 p.m. **Exhibit B** (Folder 2, subfolder 2, at 26:40 of Cameras 1 and 2); **Exhibit J**, p4.L.21 - p.5, L.6; **Exhibit K**, p.5, L.26 - p.6, L.1; p.12, L.21 - p.13, L.1. The first thing she told them was that she is the victim, and the offender is a police officer and the incident was caught on video-cameras. **Exhibit B** (Folder 2, subfolder 2, at 26:40 - 28:00 of Camera 1); **Exhibit B-1; Exhibit 0**, at City 00963-964.

ANSWER: The City admits that Peter Masheimer and Jerry Knickrehm, veteran 25th District patrolmen, arrived at Jesse's Shortstop Inn and made immediate contact with the Plaintiff at approximately 9:34 p.m. The City admits that the first thing that Plaintiff told them was that she is the victim, and the offender is a police officer and the incident was caught on video-cameras. The City objects to plaintiff's Fact No. 5 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of

violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

6. Numerous times thereafter over the next 30 minutes, Karolina told the officers that his name is Tony Abbate, that Abbate is a police officer, and that there are three cameras in the bar that recorded the incident, and even Chiriboga told Masheimer the offender was Anthony Abbate a Chicago police officer. **Exhibit B** (Folder 3, subfolder 1, at 10:30 - 11 :52, 14:35 _ 14:52 and 15:22 - 16:00 of Cameras 1 and 2); **Exhibit B-1; Exhibit C**, at City 00238 - 239; **Exhibit U** .18; **Exhibit I**, pp.338, L.15 - p. 343, L.3; **Exhibit G;** and **Exhibit G-1**, p.36, L.17 _ p.37, L.20, **Exhibit S,** City's Answers to Plaintiffs 2nd Set of Requests to Admit, ¶¶1, 3.

ANSWER: The City denies that numerous times over the next 30 minutes, Karolina told the officers that the offender's name is Tony Abbate and that Abbate is a police officer, insofar as plaintiff only cites to a few minutes of the video recording. *See Zaborowski v. Dart*, 2011 WL 6660999 at *1 (N.D. Ill., 2011) (holding that the court may disregard statements which do not properly cite to the record). Furthermore, the City denies that Karolina told the officers that the offender's name was Tony Abbate. In Exhibit B-1, which is the transcript of the video, Obrycka tells Masheimer "he's a police"; however, the transcript also provides that this statement is inaudible. Obrycka later stated, "His name is Tony, I don't know his last name the owner for sure knows, he's the police." *See* Exhibit B-1. Moreover, in her OPS statement, Obrycka stated that she told the responding officers that Tony's last name was "Abbott." *See* Exhibit C, City 00239. The City admits that Karolina told the officers that there are three cameras in the bar that recorded the incident. Further, the City admits that Chiriboga stated that she told a police officer on the phone that the offender was a police officer. However, the

City denies that Chiriboga provided this information to Masheimer. Plaintiff cites to U.18, which is a phone record of the call from Patti Chiriboga's cell phone to Jesse's Shortstop Inn. Based on this evidence, plaintiff cannot make inferences as to what the call concerned or that it was between certain individuals. The City objects to plaintiff's Fact No. 6 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

7. None of this information made its way into the official report; no mention of Abbate's last name, no mention that he was a Chicago Police officer, and no mention of the video of the entire incident. **Exhibit C**, at City 00276 - 00277; **Exhibit J**, p.59, L.1O - p.63, L.l; P.76, L.18 - p. 78, L.12. Martin Kolodziej, the manager of the bar, told the officers after he arrived that he had the entire incident on video, and that he would cue it up for them. **Exhibit N**, pp.129, L.l - p.136, L.5. One of the two officers in the squad told him to go get the video ready, and when he went into the back room to prepare to cue the video, the officers drove off. Id.

ANSWER: The City admits the original case incident report did not mention Abbate's last name, that he was a Chicago police officer, or that there was video of the incident. The City admits Martin Kolodziej was the manager of the bar and that he told the officers that he had the incident on video. The City denies that one of the two officers in the squad car told him to go get the video ready, and denies that the officers drove off when Kolodziej went to prepare to cue the video. The record shows that Officer Knickrehm told a man who came up to the car that he should retain the footage and the detectives taking over the case probably would want to

probably view it. **Ex. K, P. 118 L. 20 to P. 121 L. 1-5.** The City objects to plaintiff's Fact No. 7 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

8. The report that was allegedly done was not signed off on by the Sergeant until four days after the incident, and that report did not surface until almost 20 months after the incident occurred. **Exhibit P**, p.4, L.19 - p.30, L.22; Exhibit Q, p.33, L.3 - p.35, L.20; p.42, L.23 - p.43, L. 17; **Exhibit C**, at City 00276 - 00277; **Exhibit R**. Clancy's signatures on the disclosed report are completely out of the appropriate fields. Id. In February of 2007, a case report was to be signed off on by the end of the officer's shift, or at the end of the next shift immediately following, by the shift supervising officers. **Exhibit Q**, p.9, L.18 - p.19, L.20.

ANSWER: The City admits that the report that was allegedly done was not signed off on by the Sergeant until four days after the incident. The City denies that the report did not "surface" until almost 20 months after the incident occurred. This fact is an improper inference, based on the date that plaintiff's counsel received a copy of the report. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that the City's attorney (Ms. Anne McInnis) obtained the report and provided it to plaintiff's counsel approximately 20 months after the date of the incident. (Plaintiff's Ex. P, p. 13, L. 17 - p. 14, L. 2). The City denies that Clancy's signatures on the disclosed report are completely out of the appropriate fields. Plaintiff's description of Clancy's signature as being "completely out of the

appropriate fields" contains an unnecessary adverb and argumentative language. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Instead, the evidence relied upon by plaintiff shows that Sergeant Clancy's signature appears in the section of the report designated "Supervisor Approving Incident Name." (Plaintiff's Ex. R). The City denies that in February 2007, a case report was to be signed off on by the end of the officer's shift, or at the end of the next shift immediately following, by the shift supervising officers. Plaintiff is suggesting an improper inference—based on normal practice—as to when a Sergeant or Commanding Officer is required to sign off on a case report. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Plaintiff also is offering her opinion as to there being a requirement as to when a Sergeant or Commanding Officer must sign off on a case report, which is improper. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Castillo, J.). Instead, the evidence relied upon by Plaintiff demonstrates that no formal policy or rule was in place at the Chicago Police Department requiring sergeants to sign off on an officer's report by any particular time. (*See* Plaintiff's Ex. Q, p. 14, L. 23 - p. 14, L. 12; p. 17, L. 23 - p. 18, L. 7). The City objects to plaintiff's Fact No. 8 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the

cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

9. Masheimer and Knickrehm later lied about not having been told that Abbate was a police officer or that his last name was Abbate during their sworn statements to OPS. **Exhibit 0**, at City 00901 - 00925,00934 - 00946. As of August 2008, these officers can't seem to recall one way or the other. **Exhibit J**, p.80, L.8 - p.86, L.24, p.I 04, L.I8 - p.I 06, L.6; **Exhibit K**, p.48, L.16 - p.52, L.I4; p.106, L.8 - p.109, L.24.

ANSWER: The City denies that Masheimer and Knickrehm later lied about not having been told that Abbate was a police officer or that his last name was Abbate during their sworn statements to OPS. Officer Knickrehm stated that the dispatcher did not indicate that the offender was a police officer (Exhibit O, City 00904). Officer Knickrehm stated that he did not learn that the offender was a police officer until a few days after the incident. Also, he stated that Obrycka did not tell him Tony's last name was Abbate. Further, Officer Knickrehm stated that if his partner knew that Abbate was a police officer, then he would have indicated that in his report and would have notified a sergeant. (Exhibit O, City 0911) Officer Knickrehm stated that he did not receive information from Obrycka that the offender who battered her was a possible Department Member. (Exhibit O, City 0912) Officer Masheimer stated that neither Obrycka nor anyone else in the bar had told him that Abbate was police officer. Officer Masheimer also stated that his partner did not receive any information that Abbate was a police officer. (Exhibit O, City 0921) Officer Masheimer learned a few days later that Abbate was a police officer. (Exhibit O, City 0922) Officer Masheimer stated that he did not have any information

that the offender who battered her was a possible Department Member. (Exhibit O, City 0924) Although Masheimer and Knickrehm stated in their sworn statements to OPS that they did not know Abbate was a police officer or that his last name was Abbate, there is no evidence in the record cited by Plaintiff which establishes that Masheimer and Knickrehm lied when making these statements. The City denies that as of August 2008, these officers can't seem to recall one way or the other. When asked whether Obrycka told him that Abbate was a police officer, Officer Masheimer responded, “not that I can recall.” (Exhibit J, p.80, L. 20) Officer Masheimer stated that he does not recall Obrycka providing him with any additional information such as the last name of Big Tony. (Exhibit J, p.81, L. 4-5) Officer Masheimer refreshed his recollection by reviewing his OPS statement. (Exhibit J, p.82, L. 7-13) Officer Masheimer stated that he does not recall anyone ever stating that the suspect was a Chicago Police Officer. (Exhibit J, p.86, L. 13-14) Officer Masheimer stated that he doesn't “remember it happening either way” when referring to whether the bartender identified the suspect as a police officer. (Exhibit J, p. 86, L. 22-23) Although Officer Masheimer did state “I don't remember it happening either way”, the plaintiff's attorney's questioning was unclear. Officer Masheimer had already answered that he does not remember anyone ever stating that the suspect was a police officer. (p. 86, L. 13-14) Plaintiff's attorney continued to question him on the same topic. Plaintiff's counsel asked Officer Masheimer whether he meant that he does not recall it happening or

that he doesn't recall one way or the other whether it happened. (p.86, L. 17-20) Officer Masheimer responded that he doesn't "remember it happening either way." (p. 86, L.21-13). In his deposition, Officer Knickrehm stated that he does not recall anyone identifying the offender as a police officer or as Tony Abbate. (Exhibit K, p.109) The City objects to plaintiff's Fact No. 9 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

10. The officers made no reasonable effort to try to locate Abbate; they never issued a flash message, despite the fact that Abbate had left the bar minutes before they arrived, and they never even canvassed the area looking for him, only driving one direction from the bar over 30 minutes after they arrived without any information that he went that direction. **Exhibit B** (Folder 3, subfolder 1, at 26:30 of Cameras 1 and 2); **Exhibit J**, p. p.II5, L.7 - p.12I, L.9; **Exhibit K**, p.50, L.3 - p.5I, L.I; p.II7, L.I4 - p.II8, L.6.

ANSWER: The City denies that the officers never even canvassed the area looking for Abbate" and that they only drove one direction from the bar. The deposition of Officer Masheimer (Ex. J), and the very location that the plaintiff quotes, disputes this. Officer Masheimer testified, "Well, after we got the initial information when we left we did tour the area looking for him but we were unsuccessful." (Ex. J, p. 115 11-13.) Asked where he went, he responded, "Basically up and down Belmont and down the side street Lotus." (15-16).

When asked if they went east or west on Belmont, Officer Masheimer replied, "Both." (p. 116, 9) He then was asked about his route that night and he replied, "I know we went south on Lotus and we went down Belmont. I can't tell you if we zigzagged in there or not, but we did a tour of the area." Plaintiff's attorney even asked Officer Masheimer, "Did you ever make a request to either of them [two fellow officers] to assist you in the canvas that you and Officer Knickrehm did after you finished questioning the people in the bar?" (P. 120 L. 17-20) and later "To your knowledge, were you and Officer Knickrehm the only two who had followed up with the canvas after the investigation in the bar had concluded?" (p. 120 L. 22- P. 121 L. 1) The City admits that Officer Knickrehm did not send out a flash message and that he did not think Officer Masheimer did. The Original Case Incident Report (Exhibit C at City 276) also states that "R/O's toured area with negative results." The City admits that Officers Masheimer and Knickrehm did not issue a flash message. The City objects to the term "reasonable," as it is argumentative. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). The City objects to plaintiff's Fact No. 10 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident – Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

11. All of the above omissions and falsehoods of these officers were intentional because, once the officers learned that Abbate was a policeman, they did not want to deal with him in anyway. **Exhibit G** and Exhibit G-l, p.36, L.I7 - p.37, L.20. These officers still have their jobs and the City even agreed to reduce their penalty to half of the recommended discipline. **Exhibit 0**, at City 00933 - 01016; **Exhibit T**.

ANSWER: The City denies that the officers' conduct described by plaintiff constitute omissions and falsehoods that were intentional. Plaintiff has improperly characterized the officers' conduct as constituting omissions and falsehoods" that were intentional by using unnecessary adjectives and "argumentative language," which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Moreover, plaintiff is expressing an opinion through conclusory statements. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Castillo, J.). The City denies that once the officers learned that Abbate was a policeman, they did not want to deal with him in any way. Plaintiff is suggesting an inference, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Moreover, the evidence relied upon by plaintiff is a statement by Patti Chiriboga to Martin Kolodziej, stating that an unknown "cop on the phone" told her "if they find [Abbate] cause he's a cop, they don't want to fucking deal with him." (Plaintiff's Ex. G-1, p. 37, L.17-22). Drawing the inference—that the officers did not want to deal with Abbate once learning that he is police officer—from a hearsay statement made by Chiriboga to Kolodziej is improper. *See Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009) ("A party may not rely upon inadmissible hearsay to oppose a motion for summary

judgment."). The evidence relied upon by laintiff also is based on Chiriboga's and Kolodziej's speculation and conjecture and, therefore, inadmissible and insufficient to defeat summary judgment. *See Abioye v. Sundstrand Corp.*, 164 F.3d 364, 368 (7th Cir. 1998) ("[W]e note that conjecture or speculation regarding the employer's motives cannot be used to defeat a summary judgment motion."). The City denies that the evidence relied upon by plaintiff establishes that these officers still have their jobs and the City even agreed to reduce their penalty to half of the recommended discipline. Plaintiff identification of "these officers" is vague and, therefore, the City is unable to reply to this assertion. The evidence relied upon by plaintiff consists of investigative file documents gathered by the Office of Professional Standards and the Independent Police Review Authority ("IPRA"), concerning their investigation of Officers Masheimer, Knickrehm, Alioto, and Pfeiffer. These pages consist of interviews of the four officers, as well as findings by IPRA, but do not state whether the "officers still have their jobs" or whether the City "agreed to reduce" their recommended punishments. The City denies that there was a recommendation of punishment against Officers Alioto or Pfeiffer. IPRA concluded that the allegations against Officers Alioto and Pfeiffer were "unfounded." (Plaintiff's Ex. O, at City 01015-01016). The City admits that the City agreed to reduce the penalty against Officers Masheimer and Knickrehm to half of the recommended discipline. The City objects to plaintiff's Fact No. 11 as irrelevant for establishing municipal liability against

the City because it concerns conduct subsequent to the incident – Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

12. None of Masheimer, Knickrehm, Alioto or Pfeiffer ever heard of Abbate before February 19,2007. Exhibit J, p.8, L.1O - p.9, L.10; **Exhibit K**, p.I6, L.9 - p.I7.L.I7; **Exhibit L**, p.15, L.I5 - p.18, L.13; **Exhibit M**, p.24, L.20 - p.27, L.9. These officers violated the Department's General Orders regarding failing to report misconduct of a fellow department member in their report, at the end of their tour, and for lying under oath during their sworn OPS statements. **Exhibit O** (Id); **Exhibit S; Exhibit T**.

ANSWER: The City admits that one of Masheimer, Knickrehm, Alioto or Pfeiffer ever heard of Abbate before February 19,2007. The City denies that these officers violated the Department's General Orders regarding failing to report misconduct of a fellow department member in their report, at the end of their tour, and for lying under oath during their sworn OPS statements. The City stated that it had insufficient information to admit or deny the Requests to Admit regarding whether Peter Masheimer and Jerry Knickrehm had received information that the offender was a Department member and failed to indicate that information in the report. However, the City admitted that the IPRA investigator recommended that the related rule violation be sustained as to both officers. Plaintiff cited the settlement agreement, which did not include an admission that the officers failed to report the misconduct of Abbate in their report at the end of their tour and lied under oath during their sworn OPS

statements. (Exhibit T) However, as a part of the settlement agreement, the Rule 14 violation was deleted against Officers Masheimer and Knickrehm. None of the documents cited by Plaintiff are related to any alleged violations of the Department's General Orders by Alioto or Pfeiffer. The City objects to plaintiff's Fact No. 12 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident – Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

13. Within minutes after he left the bar at about 9:26 p.m, Anthony Abbate called Linda Burnickas, his girlfriend, from his home phone number repeatedly trying to connect with her 8 times over the span of 4 or 5 minutes, and she tried to return his call three times, each appearing to have left messages for the other during their overlapping attempts to reach each other from 9:39 p.m. to 9:45 p.m. **Exhibit V**, p.68, L.22 - p.69, L.24; Exhibit **U.5-U14.** They finally connected at 9:45 p.m. for 5 minutes, and then again at 9:50 p.m. for another 21 minutes. **Exhibi**t **U.15, U.19.**

ANSWER: Defendant admits that the record shows that there were seven calls placed from Abbate's phone to either Burnickas's home phone or cell phone during the time frame described, rather than eight. Defendant denies that the record as cited shows that it was Abbate and Burnickas who were making the phone calls.

14. Gary Ortiz called Patti Chiriboga at 9:56 p.m. for 2 minutes. Exhibit U.20. Though, Mr. Ortiz, a friend of Abbate's and Chiriboga's for a substantial period of time and a City worker, claims that he was "listening to the police scanners" when he heard something about licenses at Jesse's Shortstop Inn, apparently prompting him to go down to the bar around 10:00 p.m. **Exhibit W**, p.l 0, L.S - p.ll, L.2. Ortiz arrived at the bar at approximately 10:03 p.m, and almost immediately called Abbate for almost 2 minutes at 10:05pm. Exhibit B (Folder 3, subfolder 1, at 26:38 and 28:33 of Cameras 1 and 2); **Exhibit U**.22.

ANSWER: The City denies that Gary Ortiz called Patti Chiriboga at 9:56 p.m. for 2 minutes. Plaintiff is suggesting an inference from phone records that do not identify who made a call to whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that at 9:56 p.m., a call for 2 minutes from 773-216-1114 was made to 773-401-9640. The City admits that Ortiz is a friend of Abbate's and Chiriboga's for a substantial period of time and a City worker. The City admits that Ortiz claims that he was listening to the police scanners when he heard something about licenses at Jesse's Shortstop Inn, apparently prompting him to go down to the bar around 10:00 p.m. The City admits that Ortiz arrived at the bar at approximately 10:03 p.m. The City denies that Ortiz almost immediately called Abbate for almost 2 minutes at 10:05 p.m. Plaintiff is suggesting an inference from phone records as to whom Ortiz called, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The evidence relied upon by plaintiff establishes that Ortiz was on his cell phone around 10:05 p.m., but the evidence does not establish with whom Ortiz was speaking. The phone records cited by plaintiff establish only that a call for 2 minutes was made from 773-216-1114 to 773-685-7732 at 10:03 p.m.

15. Ortiz then called Chiriboga's cell phone for 3 minutes at 10:08 p.m. **Exhibit U.23**, **Exhibit W**, p.4, ls.15 - 18. By this time, Chiriboga had already spoken with Martin's wife, Margaret, about what Abbate did to Karolina about a half-hour earlier. **Exhibit D**, p.18, L.8-p.19, L.9. She had also already spoken to Karolina and Peter Masheimer on the phone at the bar. **Exhibit U.18; PSAF, 6**, *supra*. Burnickas, who had talked to Abbate several times by this point

at 10:08 p.m, left a message on Ortiz' cell which he checked at 10:12pm, and Ortiz called her back for almost 4 minutes at 10:14 p.m. **Exhibit U.24, U.2S and U.27.**

ANSWER: The City admits that a person called phone number 773-401-9640 from US Cellular Cell phone number 773-653-6138 at 10:08 p.m. for 3 minutes. The City denies that Gary Ortiz called Patti Chiriboga at 9:56 p.m. for 2 minutes. Plaintiff is suggesting an inference from phone records that do not identify who made a call to whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The City admits that Chiriboga spoke with Martin's wife, Margaret, about what Abbate did to Karolina, but denies that there is sufficient information to conclude that the phone conversation between Chiriboga and Margaret occurred prior to the phone conversation that took place between individuals using phone numbers 773-401-9640 and 773-653-6138.

16. After Ortiz and Burnickas' call at 10:14 p.m, Ortiz called Chiriboga at 10:l8 p.m. for almost 10 minutes. **Exhibit U.29.** During Ortiz and Chiriboga's call, Abbate and Burnickas tried to connect several times, until they finally did at 10:24 p.m. for almost 4 minutes. **Exhibit U.30-U.34.** When Burnickas' call with Abbate ended, she immediately called Ortiz at 10:28 p.m. for a little over 3 minutes. **Exhibit U**.35. During this call (V.38), Abbate called Ortiz for a minute at 10:28 p.m. **Exhibit U.36.**

ANSWER: The City admits that the record shows that phone calls were made to phone numbers corresponding to Ortiz, Burnickas, Chiriboga, and Burnickas as indicated. The City denies that the phone records cited by plaintiff identify who made a call to whom, and that plaintiff is suggesting an improper inference from these records. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.).

17. Abbate then called Jesse's Shortstop Inn at 10:30pm, Karolina answered the phone, but Abbate said nothing and Karolina eventually hung up. **Exhibit U.37; Exhibit B** (Folder 3, subfolder 2, at 22:56 - 23:09 of Cameras 1 and 2). Abbate then called Burnickas back at 10:30pm and they talked for another 12 minutes. **Exhibit U.38**. During Abbate and Burnickas' 10:30pm 12 minute call, Chiriboga called Karolina at Jesse's Shortstop Inn for almost 4 minutes at 10:40pm. **Exhibit B** (Folder 4, subfolder 1, at 3:02 - 6:33 (Cameras 2 and 3); **Exhibit U.40**. Throughout this entire time, Ortiz is in and out of the bar, on and off his cell phone as described above, and checked his voicemail at 10:31pm after Abbate's 10:28pm call. **Exhibit B** (last 4 minutes of Folder 3, subfolder 1; Folder 2, subfolder 2,00:00 - 25:00 of Cameras 1 and 2, specifically 23:52 - 24:49 of Cameras 1 and 2); **Exhibit U.39**.

ANSWER: The City denies that Abbate then called Jesse's Shortstop Inn at 10:30 p.m., Karolina answered the phone, but Abbate said nothing and Karolina eventually hung up. Plaintiff is suggesting an inference that Abbate called Jesse's Shortstop Inn based on video evidence that shows plaintiff picking up a phone around 10:30 p.m., and phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that at 10:30 p.m., a call from 773-685-7732 was made to 773-545-4427 for 11 seconds. The video surveillance tape shows that plaintiff picked up the phone at Jesse's Shortstop Inn around at 10:30 p.m., and hung up without a conversation. The City denies that Abbate then called Burnickas back at 10:30 p.m. and they talked for another 12 minutes. Plaintiff is suggesting an inference that Abbate called Burnickas based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that, at 10:30 p.m., a call from

773-685-7732 made a call to 773-735-7249 for 11 minutes and 34 seconds. The City denies that Abbate and Burnickas had a 12 minute call together at 10:30 p.m. Plaintiff is suggesting an inference that Abbate called Burnickas based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that, at 10:30 p.m., a call from 773-685-7732 was made to 773-735-7249 for 11 minutes and 34 seconds. (Plaintiff's Ex. U-2, City 00434). The City denies that Chiriboga called Karolina at Jesse's Shortstop Inn for almost 4 minutes at 10:40 p.m. Plaintiff is suggesting an inference that Chiriboga called plaintiff at Jesse's Shortstop Inn based on video evidence showing that Plaintiff is on the phone at Jesse's Shortstop Inn at 10:40 for 4 minutes, and phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that plaintiff appears on the phone on the video surveillance at Jesse's Shortstop Inn at 10:40 p.m. for 4 minutes, but the video evidence does not establish with whom plaintiff is speaking. Moreover, the phone records relied upon by plaintiff establish only that a call from 773-401-9640 was made to 773-545-4427 for 4 minutes at 10:40 p.m. The City denies that throughout this entire time, Ortiz is in and out of the bar and on and off his cell phone as described above. Plaintiff's description of Ortiz's conduct, specifically who he

was calling, is not supported by the record. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). Moreover, plaintiff's characterization that Ortiz is in and out of Jesse's Shortstop Inn and on and off his cell phone "[t]hroughout this entire time" is vague because it does not limit the temporal scope of Ortiz's actions. *See Tibbets v. RadioShack Corp.*, 2004 WL 2203418, at *16 (N.D. Ill. 2004) (Pallmeyer, J.) (disregarding Rule 56.1 statement that is vague). Instead, the evidence relied upon by plaintiff is video surveillance showing that during this time, Ortiz walks in and out of Jesse's Shortstop Inn and is on and off of a cell phone. However, the evidence does not establish with whom Ortiz is speaking. The City denies that Ortiz checked his voicemail at 10:31 p.m. after Abbate's 10:28 p.m. call. Plaintiff is suggesting an inference that Ortiz used his cell phone to check his voicemail and Abbate called Ortiz based on phone records that do not establish who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff establishes only that Ortiz was on and off of a cell phone inside Jesse's Shortstop Inn, but does not establish with whom he was speaking. Moreover, the phone records relied upon by plaintiff establish only phone number 773-216-1114 was used to check voicemail at 10:31 p.m, and that the phone associated with phone number 773-216-1114 received a call from phone number 773-653-6138 at 10:28 p.m.

18. Finally, Chiriboga arrived at the bar from the rear entrance at about 10:53 p.m., and she and Martin went into the back to view the videotape. **Exhibit B** (Folder 4, subfolder 1, at 15:57 of Cameras 1 and 2); **Exhibit N**, p.143, L.l - p.144, L.23; **Exhibit D**, p. 21, Is.8-24. Chiriboga emerged from viewing the tape at about 10:57 pm. **Exhibit B** (Folder 4, subfolder 1, at 19:55 of Cameras 1 and 2). Directly, Chiriboga goes and sits by Ortiz at the end of the bar near the front doors and they talk for several minutes. Id, at 20: 15 - 30:00; **Exhibit N**, at p.144, L.24 _ p.148, L.22.

ANSWER: The City admits that Chiriboga arrived at the bar from the rear entrance at about 10:53 p.m., and she and Martin went into the back to view the videotape. The City admits that Chiriboga emerged from viewing the tape at about 10:57 p.m. The City admits that Chiriboga goes and sits by Ortiz at the end of the bar near the front doors and they talk for several minutes.

19. Ortiz then called Burnickas at 11 :08 p.m for almost 2 minutes, and then again at 11:12 for 30 more seconds. **Exhibit U.50, U.54**. Burnickas then immediately called Abbate at 11:13 p.m 3 times, the last for 2 minutes, and right away after that conversation at 11:15, Bumickas calls Chiroboga for almost 9 minutes. Exhibit **U.55-.57.** During this almost 9 minute conversation, Chiriboga specifically told Bumickas how bad Abbate's beating of Karolina was on the video. Exhibit D, pp.44, L.I5 - p.47, L.5.

ANSWER: The City admits that the record shows that phone calls were made to phone numbers corresponding to Ortiz, Burnickas, Chiriboga, and Burnickas as indicated. The City denies that the phone records cited by plaintiff identify who made a call to whom, and that plaintiff is suggesting an improper inference from these records. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The City admits that Chiriboga told Burnickas during a phone conversation how bad Abbate's beating was on the video, but objects that this mischaracterizes the record. Chiriboga testified that she had a conversation

with Tony's girlfriend Linda after the attack and after seeing the videotape, and that she told Linda that she saw Tony on the tape, as follows: "

> I don't remember the whole conversation. But she basically wanted to know was Tony drunk."
>
> Q. What did you say when she asked you that?
>
> A: I said I'm sure he was. I said I know I seen the video. After I seen the video, I told her he's sick, he's not the Tony that I know on this video Linda, it's bad. I remember telling her that."

Thus, it is unclear if Chiriboga was stating Abbate's beating of Obrycka was bad, or if she was saying Tony looked bad on the video, or if the video was bad for Tony or, or if the overall situation was bad.

20. At some point over the next 30 minutes after that 9 minute call at 11: 15pm but before 11 :44pm, while Chiriboga and Ortiz are sitting at the bar, Ortiz delivered a not-so-subtle threat to Karolina in the form of a bribe - Tony will pay for your medical bills and your time off if you will not register a complaint including filing a civil lawsuit. **Exhibit C**, at City 00233 - 00234; **Exhibit I,** p. 257, L.9 - p.258, L.20; **Exhibit F**, ¶7. The implication Karolina took was that if she didn't agree to it, and followed through with the complaint, she would suffer consequences. **Id**.

ANSWER: The City denies that at some point over the next 30 minutes after that 9 minute call at 11:15 p.m. but before 11:44 p.m., while Chiriboga and Ortiz are sitting at the bar, Ortiz delivered a not-so-subtle threat to Karolina in the form of a bribe - Tony will pay for your medical bills and your time off if you will not register a complaint including filing a civil lawsuit. Plaintiff's characterization of the evidence—that Ortiz "delivered a not-so-subtle threat to Karolina" constitutes argumentative language, which is improper. *See Kleban v. S.Y.S*

Restaurant Mgmt, Inc., 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Moreover, Plaintiff's interpretation of Ortiz's comments to plaintiff as constituting a "not-so-subtle threat" expresses an opinion and suggests an inference that is not supported by the record. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Castillo, J.); *see also Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Plaintiff furthermore is making a conclusory statement – that is, she is assuming that Ortiz threatened Plaintiff, which is improper. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Castillo, J.). Plaintiff also mischaracterizes Ortiz's comments – offering to have Tony pay Plaintiff's medical bills and time off in consideration for not registering a complaint including filing a civil lawsut – as a "threat." Instead, the evidence relied upon by plaintiff demonstrates that she testified that Ortiz asked her whether, if Abbate apologized and offered her money, she would refrain from pressing charges against him or filing a civil lawsuit. Plaintiff testified that Ortiz's offer made her angry, but that she did not feel as though Ortiz had threatened her in any way and that she was not afraid of him. The City denies that the implication Karolina took was that if she did not agree to it, and followed through with the complaint, she would suffer consequences. The evidence relied upon by plaintiff is her own self-serving affidavit used to controvert her prior sworn deposition testimony, which is improper. *See Lafary v. Rogers Group, Inc.*, 591 F.3d 903, 908 (2010). Plaintiff's affidavit is self-serving and without support in the record and, therefore, should

be stricken. *See Patterson v. Chi. Ass'n for Retarded Citizens*, 150 F.3d 719, 724 (7th Cir. 1998). Plaintiff testified in her deposition that she did not feel threatened in any way by Ortiz's offer to have Abbate apologize and give her money in consideration for her not filing a criminal complaint or civil lawsuit. Plaintiff further testified that when Ortiz proposed the offer to her, she responded to him in a loud voice, "Fuck no. What do you think I am? I'm not that stupid." Plaintiff also testified that she would look stupid if she took the money and an apology instead of filing a civil lawsuit, especially after she discovered that Abbate was a police officer. Thus, plaintiff's affidavit is inconsistent with her prior sworn deposition testimony and, thus, cannot be used to defeat summary judgment. *See Lafary v. Rogers Group, Inc.*, 591 F.3d 903, 908 (2010).

21. Abbate then called police officers Scott Dahlstrom and Dominic Colucci at around 11: 16pm., and then called Joe Boroff, his partner and friend in the 20th District, at l1:19 p.m., who was on duty. **Exhibit U.60 - U.62; Exhibit BB**, p.65, L.18 - p.68, L.6. Boroff claims that he and Abbate only talked about their upcoming shift briefly and then Abbate told him he was out and in a scuffle and that he was thinking of meeting Boroff to eat, but Boroff told him to stay put because he thought he might have been drinking. **Id**, p.69, L.19 - p. 77, L.22; **Exhibit CC,** at City 03520 - 035233. However, the phone call lasted 25 or 26 minutes, and during the call between Abbate and Boroff, either another call was joined as a three way call or they were back and forth on call waiting because 10 minutes into his call with Boroff, Bumickas called Abbate first for 23 seconds, then for 8 minutes at 11 :28 p.m. **Exhibit U.63-64.**

ANSWER: The City admits that a person called phone number 773-771-9833 from phone number XXX-XXX-7732 at around 11:16 p.m. The City admits that a person called phone number 773-206-2800 from phone number XXX-XXX-7732 at around 11:16 p.m. The City admits that a person called phone number 312-

213-4187 from phone number XXX-XXX-7732 at 11:19 p.m. The City denies that the record cited establishes that these calls were made to or from the persons indicated. Plaintiff does not cite to the record to establish that Boroff's was Abbate's friend and partner in the 20th district. The City admits that Boroff stated that he and Abbate only talked about their upcoming shift briefly and then Abbate told him he was out and in a scuffle and that he was thinking of meeting Boroff to eat, but Boroff told him to stay put because he thought that he might have been drinking. However, the Plaintiff does not cite to any evidence in the record that establishes that Boroff made false statements regarding his phone conversation with Abbate. The City admits the phone call between phone number 312-213-4187 and phone number XXX-XXX-7732 lasted 25 or 26 minutes. The City admits that a person used phone number 773-735-7249 to call XXX-XXX-7732 at 11:27 for 23 seconds. The City admits that a person used phone number 773-735-7249 to call XXX-XXX-7732 at 11:28 for 8 minutes and 16 seconds. The City denies that the record cited establishes that these calls were made to or from the persons indicated. The City states that there is insufficient information to admit or deny whether another call was joined as a three way call or whether they were back and forth on call waiting.

22. At 11:38 p.m, immediately after that call with Abbate, Bumickas called Jesse's Shortstop Inn and talked to Karolina. **Exhibit U.66; Exhibit V**, p.104, ls.3 - 24; **Exhibit C**, at City 00239. Burnickas was evasive, refusing to give Karolina her last name and prying Karolina for personal information, scaring Karolina. **Exhibit I**, p.307, L.I5 - p.309, L.7. Abbate then called

Ortiz at about 11:44 p.m. for about a minute and a half, and again at 11:46 for about 1 minute. **Exhibit U.68, U.70**.

ANSWER: The City admits that at 11:38 p.m Bumickas called Jesse's Shortstop Inn and talked to Karolina, but denies that the record cited established that this call was immediately after "that call with Abbate." The City admits that Burnickas refused to give Karolina her last name, but denies that the record cited established that Karolina was scared by the conversation. Plaintiff testified that she was scared to give her last name after she found out that Abbate was a police officer and that she knew this when she spoke with Burnickas, and that she remembered nothing when asked if Burnickas threatened her in any way. (Exhibit I, p. 308, ll. 9-22). The City objects to "evasive" and "prying" to describe Burnickas' conversation as argumentative. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). The City admits that the record shows that phone calls were made to phone numbers corresponding to Ortiz and Abbate. The City denies that the phone records cited by plaintiff identify that Abbate called Ortiz, and that plaintiff is suggesting an improper inference from these records. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.).

23. After these two calls from Abbate to Ortiz, Ortiz called Boroff for 4 minutes at about 11:53 p.m., and then Ortiz called Abbate at 11:57 p.m. **Exhibit U.80.** Boroff insists he never spoke to Ortiz, but Ortiz called Abbate back for 3 or 4 minutes after his call to Boroff. **Exhibit BB**, p.89, L.I5 - p.90, L. 5; **Exhibit U.81.** Boroff got off his shift at 12:00 a.m., around the end of Ortiz' 11:57 p.m. 4 minute call, and at 12:01 a.m., Boroff placed a 2 minute call to Vito Ferro, an Area 3 Detective who is a friend of Boroff's. **Exhibit BB**, p.79, L.I4 - p.80, L.9; p.82, L.I9-p.83, L.9; p. 84, L.I8 - p.88, L.I0; **Exhibit U.82; Exhibit DD**, p.29, L.I - p.42, L.22. Boroff recalls talking to Ferro, claiming that it was a "private conversation," and that Ferro was off duty, though

Ferro claims no recollection of any conversation, and Ferro admits that prior to this midnight call and the following series of calls over the next two days, he had not talked to Boroff at all in 2007. **Exhibit BB**, p.82, L.22 - p.85, L.I5; **Exhibit DD**, p. 40, L.13 - p.52.

ANSWER: The City denies that Abbate made two calls to Ortiz. Plaintiff is suggesting an inference that Abbate called Ortiz twice, which is not supported by the record and, therefore, improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.); *see* Answer to Fact No. 22, above. The City denies that Ortiz called Boroff for 4 minutes at about 11:53 p.m. Plaintiff is suggesting an inference that Ortiz called Boroff based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that, at 11:53 p.m., a call from 773-216-1114 was made to 312-213-4187 for 4 minutes. The City denies that Ortiz called Abbate at 11:57 p.m. Plaintiff is suggesting an inference that Ortiz called Abbate based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that at 11:57 p.m., a call from 773-216-1114 was made to 773-685-7732. The City denies that Boroff insists that he never spoke to Ortiz. Plaintiffs' assertion lacks foundation because it does not reference a time-frame within which Boroff is testifying that he never spoke to Ortiz. *See Jones v. Fed. Home Loan Mortgage Corp.*, 2000 WL 335738, at *6 (N.D. Ill. 2000) ("A proper foundation for a conversation must include information as to when and

where the conversation occurred, who was present, and who said what to whom."). The evidence relied upon by plaintiff demonstrates that Boroff testified that he did not speak to Ortiz at 11:53 p.m. on February 19, 2007. The City denies that Ortiz called Abbate back for 3 to 4 minutes after his call to Boroff. Plaintiff assumes facts not supported by the record. Plaintiff's assertion that Ortiz called Abbate "back" assumes that Abbate previously called Ortiz. However, the evidence relied upon by plaintiff does not show that Abbate originally called Ortiz or that Ortiz called Abbate "back." Nor does the evidence relied upon by plaintiff establish that Ortiz called Boroff. Plaintiff is suggesting an inference that Ortiz called Abbate, or vice versa, and that Ortiz called Boroff based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The evidence relied upon by plaintiff demonstrates that a call was made from phone number 773-216-1114 to number 773-685-7732 for 4 minutes after phone number 773-216-1114 was used to call 312-213-4187. The City admits that Boroff got off his shift around 12:00 a.m. The City denies that Boroff got off his shift around the end of Ortiz's 11:57 p.m. 4 minute call. Plaintiff is suggesting an inference that Ortiz called Boroff for 4 minutes based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The City admits that at 12:01 a.m., Boroff placed a 2 minute call to Vito Ferro, an Area 3 Detective who is a friend

of Boroff's. The City admits that Boroff recalls talking to Ferro, claiming that it was a "private conversation," and that Ferro was off duty, though Ferro claims no recollection of any conversation, and Ferro admits that prior to this midnight call and the following series of calls over the next two days, he had not talked to Boroff at all in 2007.

24. Abbate then called Boroff again at 12:02 or :03 for 2 minutes, at 12:08,12:09 for seconds, and then finally at 12:10 which lasts for about 8 or 9 minutes. **Exhibit U.83, U.89-.90, U.92**. Boroff then called Neil Francis' cell phone, an on-duty Area 3 Detective who is considered by Boroff as "his cousin," at 12:28 a.m. **Exhibit BB**, p. 88, L.24 - p.89, L.8, p.93, L.18 - p. 94, L.9; **Exhibit U.94.** Abbate and Francis had never even met, but Francis was an on-duty Area 3 detective and a friend of Boroff's. **Exhibit EE**, p.21, L.5 - p.22, L.5; p.34, Ls. 8-10.

ANSWER: The City admits that a person using phone number XXX-XXX-7732 called phone number 312-213-4187 at 12:02 for about 2 minutes; that a person using phone number XXX-XXX-7732 called phone number 312-213-4187 at 12:09 for seconds.; and that a person using phone number XXX-XXX-7732 called phone number 312-213-4187 at 12:11 for 10 minutes. The City denies that the record cited shows that Abbate called Boroff. Plaintiff is suggesting an inference that Abbate called Boroff based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The City admits that a phone call was made by phone number 312-213-4187 to an unknown cell phone number at 12:28 a.m. The City denies that the record cited shows that Abbate called Boroff. Plaintiff is suggesting an inference that Abbate called Boroff based on phone records that do not identify who called whom, which is

improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The City admits that Boroff considers Francis as "his cousin." The City admits that Abbate and Francis had never even met, but Francis was an on-duty Area 3 detective and a friend of Boroff's.

25. Boroff can't remember what they talked about during the call placed at 12:28 a.m. **Exhibit BB**, p.94, L.16 - p.95, L.12. Francis then called Boroff back about 25 minutes later at 12:53 a.m. for 4 minutes, and Boroff can't remember what was talked about then, either. **Exhibit U.97**; **Exhibit BB**, p.97, L.8 - p.98, L.16. Then, Boroff also tried another 20th District officer, Bill Messina, and they talked for 9 minutes, apparently about nonsense, but Boroff still can't remember what was discussed. **Exhibit BB**, p.98, L.17 - p.101, L.7; **Exhibit U.105**. Finally, at 3:05 a.m., Francis called Boroff back. **Exhibit U.106.**

ANSWER: The City admits that Boroff can't remember what they talked about during the call placed at 12:28 a.m. (if one assumes that "they" refers to Boroff and Francis). The City admits that Francis then called Boroff back about 25 minutes later at 12:53 a.m. for 4 minutes, and Boroff can't remember what was talked about then, either. The City admits that then, Boroff also tried another 20th District officer, Bill Messina, and they talked for 9 minutes, apparently about nonsense, but Boroff still can't remember what was discussed. The City admits that the record cited shows a telephone call at 3:05 a.m. between phone numbers of Francis and Boroff, but denies that Francis called Boroff back. Plaintiff is suggesting an inference that Francis called Boroff based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.).

26. When Francis called Boroff back at 3:05am, they engaged in 55 minute phone call. **Exhibit U.106.** Boroff claims they could have talked about anything. **Exhibit BB**, p.103, L.15 - p.l04, L.5. Francis does not even recall the phone calls, and cannot answer any straight questions

about whether he recalls anything about that time frame that would indicate that Boroff's recollection of the calls is wrong. **Exhibit EE**, p.34, L.11 - pA2, L.24; p.54, L.8 - p.56, L.6. The next day, February 20,2007, starting at 11:15pm, Boroff calls Abbate 6 times, until Abbate calls Boroff back at 2:33pm for a 9 minute call. **Exhibit U.109-U.1l6.** Boroff then calls Ferro twice for a total of 25 minutes. **Id**, **at U.1l7-ll8.** At 4:15pm, Macer Salomon, Boroff's former partner and a 25th District Officer, called Boroff for 4 minutes. **Id**, **at U.ll8; Exhibit BB**, pp. 14-19.

ANSWER: The City denies that Francis called Boroff back at 3:05 a.m. and engaged in a 55-minute phone call. Plaintiff is suggesting an inference that Francis called Boroff, or that Boroff originally called Francis, based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The evidence relied upon by plaintiff establishes only that a call from 312-744-7914 was made to 312-213-4187 for 55 minutes at 3:05 a.m. The City admits that Boroff claims that they could have talked about anything. The City admits that Francis does not recall the phone calls, and cannot answer any questions about whether he recalls anything about that time frame that would indicate that Boroff's recollection of the calls is wrong. The City denies plaintiff's assertion that Francis cannot answer any "straight" questions. Plaintiff's assertion contains an unnecessary adjective that is argumentative. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). The City denies that the next day, February 20, 2007, starting at 11:15 p.m., Boroff calls Abbate 6 times. Plaintiff is suggesting an inference that Boroff called Abbate based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562

(N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that on February 20, 2007 at 11:14 a.m., not 11:15 p.m., phone 312-213-4187 was used to call phone 773-685-7732 6 times. The City denies that Abbate called Boroff back at 2:33 p.m. for a 9 minute call. Plaintiff's assertion assumes that Boroff originally called Abbate, which is not supported by the record. Moreover, plaintiff is suggesting an inference that Abbate called Boroff based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that at 2:33 p.m., a call for 11 minutes, not 9, was made from phone 773-685-7732 to phone 312-213-4187. The City denies that Boroff then calls Ferro twice for a total of 25 minutes. Plaintiff is suggesting an inference that Boroff called Ferro twice based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the record citation provided by plaintiff does not contain the specific pin citations that Plaintiffs have provided (entries #273-274). The City admits that Maher Sulieman was Boroff's former partner and a 25th Dist. Officer. The City denies that at 4:15 p.m., Maher Sulieman called Boroff for 4 minutes. Plaintiff is suggesting an inference that Sulieman called Boroff based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence

relied upon by plaintiff demonstrates that at 4:15 p.m., a redacted number was used to call 312-213-4187 for 4 minutes. (Plaintiff's Ex. U-6, JB Cell, at 0011, #277).

27. Later the day of February 20, 2007, Chiriboga called Abbate for 8 minutes at 7:22 p.m., apparently at the request of Burnickas after she called Chiriboga at 7:11 pm. **Exhibit U**.120-121. Chiriboga related that during that conversation, she and Abbate agreed that Chiriboga would confront Martin Kolodziej with threats directed at Martin and Karolina to try to intimidate them from disclosing the tape, turning it over to lawyers and going forward with her complaint. **Exhibit D,** p.47, L.16. Abbate believed that if the tape was destroyed or given to him, there would be no case against him. **Id, p.54**, Is. 2-5. Chiriboga then called Martin Kolodziej to arrange a meeting, and they met up on February 21,2007 at the Main Pub in Chicago. **Id**, p.56, L.7 - p.57, L.6.

ANSWER: The City denies that Later the day of February 20, 2007, Chiriboga called Abbate for 8 minutes at 7:22 p.m., apparently at the request of Burnickas after she called Chiriboga at 7:11 pm. . Plaintiff is suggesting an inference that Francis called Boroff, or that Boroff originally called Francis, based on phone records that do not identify who called whom, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Plaintiff also has failed to cite any evidence in the record that establishes that Burnickas requested that Chiriboga call Abbate. The City denies that Chiriboga related that during that conversation, she and Abbate agreed that Chiriboga would confront Martin Kolodziej with threats directed at Martin and Karolina to try to intimidate them from disclosing the tape, turning it over to lawyers and going forward with her complaint , because it is not supported by the record evidence cited. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite

to the record.") The City admits that Chiriboga testified that Abbate indicated to her that without the tape, there would be no case against him. The City admits that Chiriboga then called Martin Kolodziej to arrange a meeting, and they met up on February 21,2007 at the Main Pub in Chicago.

28. During the conversation when they met, Chiriboga conveyed to Martin what Abbate said would happen to Martin, Karolina, the bar and the bar patrons if the tape was not turned over to Abbate in two days. **Exhibit E; Exhibit E-l**; **Exhibit D,** p.56, L.7 - p.60, L.14; p.62, L.3 - p.63, L.l3. Chiriboga admits she said these things to scare them. **Id**. Martin secretly recorded the conversation because he did not trust Chiriboga and he was afraid she might try to threaten or intimidate him because of the way she talked when she called earlier and asked him to meet her, and because she was friends with Abbate, so he went and bought the recorder after Patti called him and before he met with her. **Exhibit N**, p.167, L.l - p.169, L.7; **Exhibit I**, p.331,ls.17-23. During this recorded meeting, Martin convinced Patti to go to OPS with he and Karolina that evening, which she did, but when she got there, she refused to tell OPS about Abbate's threats. **Exhibit I**, p.362, Is.10-21; **Exhibit N**, p.199, L.6 - p.201, L.9; **Exhibit C**, at City 00253.

ANSWER: The City admits that during the conversation when they met, Chiriboga conveyed to Martin what Abbate said would happen to Martin, the bar, and the bar patrons if the tape was not turned over to Abbate in two days. The City denies that Chiriboga conveyed to Martin that Abbate said anything would happen to Karolina. In her grand jury testimony, Chiriboga testified about meeting Kolodziej at a bar called the Main Line and telling Kolodziej that she had met with Tony and another man. She also said the story was "fabricated" (P. 57 L 24) and that "There was not another man and I never met Tony" (P. 58 L 3). She did say that she had phone conversations with Abbate about getting rid of the tape (P. 58 L 6-7) and gave equivocal testimony about the nature of threats made by Abbate (PP. 58 L 24-59 L 10). She testified that Abbate said he had friends on the police force and "It would be a shame if somebody is

pulling away, you know things can happen. He was mostly threatening to sue the bar, and it's bad." (P. 60 LL. 4-7) When asked if Abbate actually made threats about people planting drugs on patrons and issuing tickets to patrons, her reply was "I don't recall. Yes, he – yes, I guess. Yes, yes. You know what, repeat the question again. … Yeah, the conversation went there. Yeah, he had." (P. 60 L. 14-20) Consequently, this testimony does not support that Karolina herself was threatened. The City admits that Chiriboga testified she said these things to scare Martin "into giving the tape up, not to turn the tape in" (Exhbit D, p. 58, LL 21-23), but denies that she admitted she said these things to scare Karolina. The City admits that Martin secretly recorded the conversation because he did not trust Chiriboga and he was afraid she might try to threaten or intimidate him because of the way she talked when she called earlier and asked him to meet her, and because she was friends with Abbate, so he went and bought the recorder after Patti called him and before he met with her. The City admits that during this recorded meeting, Martin convinced Patti to go to OPS with he and Karolina that evening, which she did, but when she got there, she refused to tell OPS about Abbate's threats.

29. In the following days, Karolina learned of Abbate's threats directed at her, the bar personnel and customers from Martin Kolodziej, Chiriboga and by listening to the recording of the Kolodziej/Chiriboga recorded conversation in which Chiriboga conveyed the threats, and Karolina was scared. **Exhibit I,** p.311,LA - p.313, L.8; p.327, Is. 17-21; p.336, Is 9-21; p.376, L.l1 - p.378, LA; pA09, LA - pAlO, L.7; p.569, L.5 - p.571, L.8.; **Exhibit F, ¶9.** Karolina quit working at Jesse's Shortstop Inn a week after the incident because she was too afraid of what might happen to her and didn't feel safe in that bar anymore. **Exhibit I**, p.60, L.24 - p.61, L.2; p.316, L.21 - p.317, L.17; p.355, L.4 - p.356.
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ANSWER: The City denies that in he following days, Karolina learned of Abbate's threats directed at her or the bar personnel. Plaintiff mischaracterizes the evidence and is expressing opinion by making a conclusory statement that "Abbate directed threats at her" or that any alleged threats were made to the "bar personnel." *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Castillo, J.). No evidence supports that Abbate had any contact with Plaintiff in the days following February 20, 2007, or that Abbate threatened Plaintiff. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). The evidence relied upon by plaintiff demonstrates that plaintiff testified in her deposition that Chiriboga told her of a conversation that Chiriboga had with Abbate, where Abbate threatened Chiriboga to get the video surveillance tape or there would be "problems for the bar and people." The record is devoid of any evidence that Abbate directed any threat to Plaintiff. Plaintiff testified that Abbate had threatened Chiriboga, not herself. The City admits that plaintiff learned about Abbate's threats directed at the bar's customers from Kolodziej, Chiriboga, and by listening to the recording of Kolodziej/Chiriboga recorded conversation in which Chiriboga conveyed the threats. The City admits that plaintiff was scared after hearing about Chiriboga's conversation with Abbate. However, plaintiff's affidavit (Plaintiff's Ex. F, ¶8), should be stricken because it is a self-serving affidavit that is not supported by the record. *Buie v. Quad Graphics, Inc.*, 366 F.3d 496, 504 (7th Cir. 2004). Plaintiff never testified in

her deposition that she heard of threats from Abbate to her "life and security." Nor is there any evidence in the record that Abbate threatened plaintiff's "life and security." Plaintiff testified that she cannot remember there ever being a time when she was unwilling to sign a criminal complaint against Abbate. The City denies that plaintiff quit working at Jesse's Shortstop Inn a week after the incident because she was too afraid of what might happen to her. The evidence relied upon by plaintiff does not establish that plaintiff quit her job because "she was too afraid of what might happen to her." Plaintiff's assertion as to the degree of any fear that plaintiff had (that she was "too afraid") is improper because plaintiff is expressing an opinion by using conclusory statements. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Castillo, J.). The City admits that plaintiff quit working at Jesse's Shortstop Inn a week after the incident because she didn't feel safe in that bar anymore.

30. After the February 21,2007, meeting with Martin and Karolina at OPS, and not knowing Martin recorded their conversation, Chiriboga later lied to OPS on February 26,2007, about the whole incident, her involvement with Ortiz, Bumickas and Abbate, and her knowledge of the events of February 19th, 20th and 21st. **Exhibit C**, at City 00268 - 00273; **Exhibit D**, p.64, L.14 - p.71, L.24.

ANSWER: The City admits that Chiriboga met with Martin and Karolina at OPS on February 21, 2007. The City denies that Chiriboga did not know Martin had recorded their conversation because plaintiff cites to no evidence to support this proposition. In addition, "the whole incident," "her involvement with Ortiz, Bumickas and Abbate," and "the events of February 19th, 20th and 21st" are vague, such that the City can neither admit or deny them. The City admits

that the evidence cited shows that in her grand jury testimony, Chiriboga admitted that she lied in her OPS statement about the fact that Tony tried to intimidate people at the bar and that he wanted to obtain the tape, and that she lied that she did know Gary's last name and that she knew that Gary and Tony were friends.

31. She lied in denying that she knew Abbate; she lied in denying that she talked to Abbate after the incident; she lied in denying that she had met with Abbate after the incident; she lied in denying that she knew Ortiz; she lied in denying that she was in the bar when Ortiz was there; she lied in denying that Ortiz knew Abbate. Id. It was not until March 23, 2007, after the public airing of the video and on the issuance of a Grand Jury subpoena and a grant of use immunity that Patti Chiriboga talked about the conspiracy among all of them. **Exhibit D**, p.l, L.l - p.3, L.13. At each of their depositions in this matter, the Defendants Abbate, Ortiz and Chiriboga all asserted their rights to be free from self-incrimination pursuant to the 5th Amendment to the United States Constitution. **Exhibit X; Exhibit Y; Exhibit Z**.

ANSWER: The City admits that, if "she" refers to Chiriboga, and if "*id.*" refers to both Chiriboga's OPS statement and her grand jury testimony, Chiriboga lied in denying that she knew Abbate; she lied in denying that she talked to Abbate after the incident; she lied in denying that she had met with Abbate after the incident; she lied in denying that she knew Ortiz; she lied in denying that she was in the bar when Ortiz was there; she lied in denying that Ortiz knew Abbate. The City admits that Chiriboga testified before the grand jury on March 23, 2007. The City also admits that her grand jury testimony occurred after she was issued a Grand Jury subpoena and a grant of use immunity. The City objects on vagueness grounds to reference to "the public airing of the video" and "the conspiracy among all of them." The City states that the evidence cited by plaintiff does not support that inference that the reason

testified before the grand jury was because of "the public airing of the video" and the issuance of a grand jury subpoena, or that she testified about any kind of conspiracy. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). and on the issuance of a Grand Jury subpoena and a grant of use immunity that Patti Chiriboga talked about the conspiracy among all of them. Accordingly, the City denies that it was not until March 23, 2007, after the public airing of the video and on the issuance of a Grand Jury subpoena and a grant of use immunity that Patti Chiriboga talked about the conspiracy among all of them. If "their" refers to Abbate, Ortiz, and Chiriboga, the City admits that At each of their depositions in this matter, the Defendants Abbate, Ortiz and Chiriboga all asserted their rights to be free from self-incrimination pursuant to the 5th Amendment to the United States Constitution.

32. As briefly referenced in 27 and 29, above, on February 21,2007, at about 8:30 p.m., Karolina, Martin Kolodziej and Patti Chiriboga went into OPS to report the incident. See above; **Exhibit C,** at City 00231 - 00234. Martin brought a zip drive of the bar's surveillance recordings, but OPS could not get the files open to view the recordings, so Martin went home and returned that same night with the entire surveillance system computer. **Exhibit N**, p.157, L.6 - 158, L.9.; p.197, L.20 - p.199, L.5; **Exhibit FF**, p.127, L.14 - p.128, L.1. Regardless, by the night of February 21,2007, supervisors in OPS, including Mike Duffy, OPS' Chief Administrator, were aware of the allegation and that the incident was captured on video surveillance, and that the surveillance system's hard drive would be made available the next day, the 22nd. **Exhibit FF**, p.128, L.2 - p.132, L.9.

Immediately upon the receipt of the report and after reviewing the video, and even though the allegations were strictly of an aggravated battery and explicitly not an allegation of the use of excessive or unreasonable force, OPS and Duffy classified the complaint as excessive force and opened an administrative investigation. **Exhibit FF**, p.137, L.4 - p.139, L.18. This decision is contrary to the express mission of OPS, as the incidents alleged were not excessive force, but criminal battery. **Exhibit GG.**

ANSWER: The City admits the assertions in the first paragraph of Fact Number 32, subject to the objection on vagueness grounds to "the incident" and "the allegation." The City admits the assertion in the second paragraph of Fact Number 32 that immediately upon the receipt of the report and after reviewing the video, OPS and Duffy classified the complaint as excessive force and opened an administrative investigation. The City denies that the allegations were strictly of an aggravated battery and explicitly not an allegation of the use of excessive or unreasonable force, as this is an improper legal conclusion. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000). The City states that the statement that the decision to classify the complaint as excessive force is contrary to the express mission of OPS is contradicted by the evidence cited by plaintiff to support it, and therefore the City denies it. *See Brown v. Advocate South Suburban Hosp.*, 2011 WL 6753995 (N.D.Ill. 2011). The City objects to plaintiff's Fact No. 32 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

[PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS DOES NOT CONTAIN FACT NO. 33.]

34. At noon on Thursday February 22,2007, Martin went back to OPS and he relayed

to OPS what he had mentioned to OPS the night before, that Chiriboga had conveyed threats to him and Karolina that if Martin did not turn the video over to Abbate within 2 days, that Martin, Karolina, other bar personnel and bar patrons lives were in danger, and they would get falsely arrested for DUI or have a pound of cocaine planted on them. **Exhibit N**, p.200, L.13 - p.214, L.20; **Exhibit C**, at City 00254. By 5:00 p.m. that day of the 22nd, OPS knew that Martin had a tape of Abbate's threats made through Chiriboga. **Exhibit C**, at City 00256 - 00257.

ANSWER: The City denies that at noon on Thursday February 22,2007, Martin went back to OPS and he relayed to OPS what he had mentioned to OPS the night before, that Chiriboga had conveyed threats to him and Karolina that if Martin did not turn the video over to Abbate within 2 days, that Martin, Karolina, other bar personnel and bar patrons lives were in danger, and they would get falsely arrested for DUI or have a pound of cocaine planted on them. Exhibit C is the OPS report. It does not indicate Kolodziej mentioning any threats on the previous day. It does not mention threats being directed at Obrycka at all. It mentions that Chiriboga said she met Abbate and another man in plainclothes, and that Abbate told her she had two days to get the tape or they would issue DUIs and plant drugs on patrons leaving the bar. It mentions Chiriboga claimed Abbate knew the license plate numbers of Kolodziej and his wife, and had taken down her license plate number. There is no mention in the report of there being an audiotape of the conversation. Exhibit N is Kolodziej's deposition. In it he testified that he was at OPS with Chiriboga, Obrycka and the investigators when he said, "Patti, why don't you tell them what the guy says about me, you know, and the stuff, cocaine and stuff like that." (P. 200 L. 20-24) Kolodziej testified that Chiriboga said she did nt want to because he was her friend, and

she started to talk like "he didn't deserve it." (P. 201 L. 5 –L. 9) Kolodziej testified that he did not remember to whom he talked to on February 21, 2007, even after being shown the OPS report referred to above to refresh his memory. P. 202 L. 2-10) The City admits that By 5:00 p.m. that day of the 22nd, OPS knew that Martin had a tape of Abbate's threats made through Chiriboga. The City objects to plaintiff's Fact No. 34 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

35. Duffy, and his Chief Investigator, Nate Freeman, viewed the video from the hard drive after 3:00pm on Thursday the 22nd. **Exhibit FF**, p.134, L.I - p.136, L.II. Kirby and her General Investigations supervisor, Lt. David Naleway, and her Sergeant, Joseph Stehlik, were also present. **Exhibit HH**, p.4l, L.16 - p.47, L.18; **Exhibit II**, p.22, L.12 - p.29, L.2. Kirby claims she never saw the video until she got a call to go to the Superintendent's Office later that day, and saw it during that meeting or after. **Exhibit JJ**, pp.60, L.9 - p.65, L.2. Once they saw it, Duffy immediately contacted the superintendent's office. **Exhibit FF**, p.143, L.l 0 - p.144, L.16. The Superintendent's office then contacted numerous high ranking individuals, including Kirby, Commander Frank Gross, Hiram Grau and others, for a meeting that same day held in the office of Phil Cline, the Superintendent of the Chicago Police Department,at which the superintendent was present either in person or over the phone. **Exhibit JJ**, p. 61, L.6 _ p.63, L.15; **Exhibit FF**, p.144, L.17 - p.146, L.7; **Exhibit KK**; **Exhibit LL.** The video was played several times during the meeting. **Exhibit FF**, p.148, L.23 - p.147, L.2.

ANSWER: The City admits that that Duffy, and his Chief Investigator, Nate Freeman, viewed the video from the hard drive after 3:00 p.m. on Thursday the 22nd. The City admits that Kirby and her General Investigations supervisor, Lt. David Naleway, and her Sergeant, Joseph Stehlik, were also present. The City admits

that Kirby claims she never saw the video until she got a call to go to the Superintendent's Office later that day, and saw it during that meeting or after. The City admits that once they saw it, Duffy immediately contacted the superintendent's office. The City denies that the Superintendent's Office then contacted numerous high ranking individuals, including Kirby, Commander Frank Gross, Hiram Grau, and others, for a meeting that same day held in the office of Phil Cline, the Superintendent of the Chicago Police Department. Plaintiff's use of the word "*numerous*" is an unnecessary adjective indicating opinion and is misleading. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Plaintiff also is suggesting an inference that Frank Gross and Hiram Grau and others were contacted by the Superintendent's Office because they were present for the viewing of the video surveillance at the Superintendent's Office, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). In addition, Plaintiff's assertion that "*others*" were contacted by the Superintendent's Office is vague. Instead, the evidence relied upon by Plaintiff demonstrates that the Superintendent's Office contacted Kirby and Duffy to come to the Superintendent's Office to view the video surveillance. The evidence relied upon by Plaintiff does not demonstrates Gross and Grau were contacted by the Superintendent's Office, although they were present there to view the video surveillance. The City admits that the superintendent was present either in person or over the phone at the meeting in this

Superintendent's Office. The City admits that the video was played several times during the meeting. The City objects to plaintiff's Fact No. 35 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

36. At that point, Superintendent Cline directed OPS to handle the investigation, directed OPS to contact the State's Attorney's Office for review and directed IAD to provide support where needed. **Exhibit FF**, p.147, L.14 - p.150, L.2. This should not have been an OPS investigation, as it involved allegations of criminal conduct. **PSAF, ¶33, *supra***. The subject of who had copies of the video was specifically discussed, too, among the meeting's participants in relation to whether the media had the video, and it was determined OPS had the original and the zip drive copy. **Exhibit FF**, p.150, L.3 - P.15l, L.I8. There was no discussion about any urgency to locate Abbate or to issue any press release regarding the fact that a desperate, armed and dangerous officer was threatening people, including to release the video or to ask for public assistance in identifying additional witnesses or locating the officer. **Exhibit FF**, p.143, L.I2 - p.l55, L.21; **Exhibit JJ**, p.61, L.6 - P.75, L.5.

ANSWER: The City admits that at that point, Superintendent Cline directed OPS to handle the investigation, directed OPS to contact the State's Attorney's Office for review and directed IAD to provide support where needed. The City denies that his should not have been an OPS investigation, as it involved allegations of criminal conduct. This assertion improperly relies on a legal conclusion. *See Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000). The City admits that the subject of who had copies of the video was specifically discussed, too, among the meeting's participants in relation to whether the media had the video, and it was determined OPS had the original and the zip drive copy. The City denies that it had the zip drive copy. (Exhibit

FF, p.150, L. 7-11) The City admits that there was no discussion about locating Abbate or to issue a press release to locate him or to identify additional witnesses. The City denies the remaining assertions. Debra Kirby did not learn about Abbate's threats the same date that she watched the video. (Exhibit JJ, p.74-75) Accordingly, Plaintiff cannot claim that there should have been a discussion about the fact that a "desperate, armed and dangerous officer was threatening people." Debra Kirby was not aware of the threats at the time of the discussion. Debra Kirby stated that she delegated responsibilities to others so that they could find Abbate and relieve him of his police powers. (Exhibit JJ, p.71) Neither Debra Kirby nor Mike Duffy were asked about why they did not release the video or ask for public assistance in identifying additional witnesses or locating the officer. The City denies plaintiff's description of Abbate a "desperate, armed and dangerous officer was threatening people," insofar as it contains unnecessary adverbs and adjectives that are improper in a statement of facts. *See Kleban v. S.Y.S. Restaurant Mgmt. Inc.*, 994 F.Supp. 932, 935-36 (N.D.Ill. 1998). The City objects to plaintiff's Fact No. 36 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

37. As of the end of the meeting, Duffy had only told Kirby that he might need IAD personnel if there needed to be any arrests made. **Exhibit FF**, p.l54, L.8 - p.156, L.IO. Kirby decided to assign responsibilities to her confidential investigations section. **Exhibit FF, Id.**; **Exhibit HH**, p.76, Is. 6-20; p.82, L. 7 - p.83, LA. Duffy never asked Kirby to contact the State's Attorney's Office directly regarding the investigation, as that was his review referral to make. **Exhibit FF**, p.162, L.2 - p.166, L.8. A meeting was scheduled for the next day, Friday, February

23rd, 2007, by Mike Duffy for personnel from IAD and OPS the State's Attorney's Office to view the video and evaluate charging options. **Exhibit MM**, p.9, Is.8-16.

ANSWER: The City admits the assertions contained in Fact No. 37. The City objects to plaintiff's Fact No. 37 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

38. However, before the meeting in the Superintendent's office about the video on the 22nd, Kirby had already met with and given directions to Stehlik and Naleway to interview Karolina after she, Duffy, Stehlik and Naleway had viewed the video before the meeting in the superintendent's office and even though it was an OPS investigation. **Exhibit HH**, p.73, L.22 _ p.76, L.5; **Exhibit II**, pAO, Is.9-23. During this earlier meeting in her office, Kirby called Tom Bilyk, the Deputy Chief of the State's Attorney's Professional Standards Unit, ahead of both the meeting with the Superintendent and the one to be scheduled the next day with the State's Attorney to discuss the video and charging with him. **Exhibit HH**, p.55, LA - p.58, L.24; p.73, L.22 - p.74, L.5; **Exhibit II**, p.31, L.14 - p.37, L.9; pAO, L.24 - pA2, L.13. During that phone call on speakerphone, Kirby told Bilyk about the video, downplayed the severity saying that Abbate was taking swings but a lot of them missed, and told Bilyk she thought it was a simple battery. **Id**. Kirby does not recall any of these events, as she claims that she never heard about the case until she was called down to the Superintendent's conference room or saw the video until during or after the meeting in the Superintendent's conference room. **Exhibit JJ**, p.61, L.6-p.62, L.9.

ANSWER: The City admits that Kirby met with and gave directions to Stehlik and Naleway to interview Plaintiff. The City denies that Kirby met with and directed Stehlik and Naleway to interview Plaintiff before the meeting in the Superintendent's Office about the video on the 22nd, and after she, Duffy, Stehlik, and Naleway had viewed the video before the meeting in the Superintendent's Office and even though it was an OPS investigation. The

evidence relied upon by Plaintiff does not support this assertion. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record.") The evidence relied upon by Plaintiff shows that Naleway and Stehlik both testified that Kirby instructed them to interview Plaintiff, but neither testified as to whether Kirby instructed them before the meeting or after both of them viewed the video with her. (Plaintiff's Ex. HH, p. 73, L. 22 - p. 76, L. 5; Plaintiff's Ex. II, p. 40, Ls. 9-23). Additionally, Plaintiff's assertion that Kirby instructed Stehlik and Naleway to interview Plaintiff "even though it was an OPS investigation" is irrelevant and, therefore, should be ignored. *See Cady v. Sheahan,* 467 F.3d 1057, 1060 (7th Cir.2006). Naleway testified that Kirby had instructed that he and Stehlik interview Plaintiff for purposes of criminal charging, not for purposes of an OPS investigation. (Plaintiff's Ex. HH, Ls. 2-13). The City admits that during a meeting in her office, Kirby called Tom Bilyk, the Deputy Chief of the State's Attorney's Professional Standards Unit, ahead of the meeting scheduled the next day with the State's Attorney to discuss the video and charging with him. The City denies that the evidence cited by Plaintiff does not demonstrate that Kirby instructed Stehlik and Naleway to interview Plaintiff ahead of the meeting with the Superintendent. The evidence cited by Plaintiff does not demonstrate at what point in time Kirby instructed Stehlik and Naleway to interview Plaintiff. The City admits that during that phone call on speakerphone, Kirby told Bilyk about the video. However, the evidence relied

upon by Plaintiff's is Naleway's deposition testimony (Plaintiff's Ex. II, p. 31, L. 14 - p. 37, L. 9, p. 40, L. 24 - p. 42, L. 13), in which Naleway testifies as to what Kirby said to Bilyk, which constitutes inadmissible hearsay. *See Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009) ("A party may not rely upon inadmissible hearsay to oppose a motion for summary judgment."). The City denies that Kirby downplayed the severity saying that Abbate was taking swings but a lot of them missed. Plaintiff's assertion that Kirby "*downplayed the severity*" constitutes argumentative language, which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Furthermore, the evidence relied upon by plaintiff's is Naleway's deposition testimony, in which Naleway testifies as to what Kirby said to Bilyk, which constitutes inadmissible hearsay. *See Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009) ("A party may not rely upon inadmissible hearsay to oppose a motion for summary judgment."). The evidence relied upon by plaintiff shows that Naleway related that Kirby told Bilyk that Abbate was involved in "a bar fight," and that Abbate was "taking some swings at [Plaintiff] but a lot of them [were] misses, there's some kicking going on, but from what we can see on the tape it appears it's a simple battery." The City admits that Kirby told Bilyk that she thought it was a simple battery. However, the evidence relied upon by Plaintiff is Naleway's deposition testimony, in which Naleway testifies as to what Kirby said to Bilyk, which constitutes inadmissible hearsay. *See Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir.

2009) ("A party may not rely upon inadmissible hearsay to oppose a motion for summary judgment."). The City denies that Kirby does not recall any of these events. Plaintiff is suggesting an inference from Kirby's deposition, where she states that she does not recall viewing the video surveillance before being called to the Superintendent's Office, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that the first time that Kirby learned that the incident had been caught on video was when she "was called down to the supe's office and OPS was already there." The City admits that Kirby claims that she never heard about the case until she was called down to the Superintendent's conference room or saw the video during or after the meeting in the Superintendent's conference room. The City objects to plaintiff's Fact No. 38 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

39. After that telephone meeting, Naleway claims that based on this phone call, both sides of which he could not hear, the State's Attorney had declined felony charges. **Exhibit HH**, p.73, L.22 - p.74, L.20. The meeting to determine the charges was not until the next day, at which IAD and OPS supervisors were present, and the State's Attorneys deny they ever declined anything. **Exhibit MM**, p.12, L.1O - p.22; **Exhibit NN**, p.16, L.6 - p.27, L.7. The topic of Abbate's threats and intimidation of Martin and Karolina were specifically discussed. **Exhibit MM,** p.15, Is.I-18 . Naleway directed his subordinate officers, Stehlik and Detective Dion Boyd,

to go and take Karolina's statement and have her sign complaints for whatever they thought was the "highest possible charges" based upon her statement and her report of injuries to them during the interview. **Exhibit HH**, p.84, L.9 - p.93, L.8.

ANSWER: The City admits that Naleway was advised by Debra Kirby that the State's Attorney was not pursuing any type of felony charges. The City denies the remaining assertions. Naleway did not have any personal knowledge of the phone conversation between Kirby and Bilyk and therefore, he could not have stated that the State's Attorney's decision was "based on this phone call." The City admits that IAD and OPS supervisors were present at a meeting on February 23rd. Further, the City admits that the State's Attorneys did not make any decisions regarding which charges should be filed against Abbate. The City denies that the purpose of the meeting was to determine the charges to be filed against Abbate. (See Exhibit MM, p.16-24; Exhibit NN, p.27, L. 8-11) The purpose of the February 23rd meeting was to allow the state's attorneys to watch the video. The City denies that the topic of Abbate's threats and intimidation of Martin and Karolina were specifically discussed, as the evidence cited does not support this assertion. Bilyk does not specifically say "Abbate's threats and intimidation of Martin and Karolina." (Exhibit MM, P.15) The City denied that Naleway directed his subordinate officers, Stehlik and Detective Dion Boyd, to go and take Karolina's statement and have her sign complaints for whatever they thought was the "highest possible charges" based upon her statement and her report of injuries to them during the interview. The City admits that Naleway instructed Stehlik and Boyd to take Karolina's statement and to

ascertain whether she was willing to sign a complaint. (Exhibit HH, p. 86, L. 2-5, p.92, L. 24 - p.93, L. 1-2) The City further admits that Naleway directed Stehlik and Boyd to seek the highest possible charge. (Exhibit HH, p.86) The City denies that the officers were to "have her sign complaints for whatever they thought was the 'highest possible charges'." (Exhibit HH, p.92, L. 24 - p.93, L. 1-2) The City objects to plaintiff's Fact No. 39 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

40. Boyd and Stehlik went to interview Karolina the evening of February 22, 2007, before the State's Attorney even reviewed the case for charging, with a pre-typed complaint form for a simple battery and had Karolina sign it. **Exhibit PP**, at City 00836; **Exhibit II**, p.63, L.24-p.66, L.17; **Exhibit OO**, p.52, L.24 - p.57, L.23. After the State's Attorney approved the felony charge for Aggravated Battery on March 20, 2007 after the public airing of the video, Kirby called Bilyk and asked him if the felony charging decision was retaliation for the CPD only charging a simple battery. **Exhibit MM**, p.35, L.l3 - p.36, L.14.

ANSWER: The City admits that Boyd and Stehlik went to interview Karolina the evening of February 22, 2007 and had Obrycka sign a complaint for simple battery. The City denies that the record as cited shows that Boyd and Stehlik did so before the State's Attorney reviewed the case. The City denies that the record as cited shows that the complaint was "pre-typed." The City admits that Bilyk testified that after the State's Attorney approved the felony charge for Aggravated Battery on March 20, 2007 after the public airing of the video, Kirby called

Bilyk and asked him if the felony charging decision was retaliation for the CPD only charging a simple battery. The City denies that the record cited refers to "the public airing of the video," and so mischaracterizes the evidence. The City further states that plaintiff mischaracterizes the record cited by failing to include Bilyk's testimony that rearresting Abbate on a felony charge was not retaliation for Abbate previously having been charged with a misdemeanor. (Exhibit MM, p.35, L.l3 - p.36, L.14) The City objects to plaintiff's Fact No. 40 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

41. Once Karolina signed the complaint, nothing else was done until March 14, 2007 because IAD could not locate one of its own officers; specifically, IAD Sgts. Stehlik, Boyd, Martin and Maraffino effectively made no attempt to locate Abbate, other than to drive to his District of Assignment, knock on his door and his father's door. **Exhibit II**, p.71, L.14 - p.74, L.14; **Exhibit OO**, p.75, L.16 - p.82, L.18; **Exhibit II,** p.110, Is.6-14; **Exhibit PP,** at City 00816, 00838 - 00839, 03105; **Exhibit HH**, p.l00, L.8 - p.116, L.15.

ANSWER: The City denies that once plaintiff signed the complaint, nothing else was done until March 14, 2007 because IAD could not locate one of its own officers. Plaintiff is suggesting the inference that "IAD could not locate one of its own officers [Abbate]" because Abbate was not arrested immediately after Plaintiff signed the complaint, which is improper. *See Servin v. GATX Logistics, Inc.*,

187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). Instead, the evidence relied upon by plaintiff demonstrates that IAD had learned that, after plaintiff signed the criminal complaint, Abbate had checked into a rehab facility (Plaintiff's Ex. OO, p. 80, L. 22 - p. 82, p. 12). The City denies that IAD Sgts. Stehlik, Boyd, Martin, and Maraffino effectively made no attempt to locate Abbate, other than to drive to his District of Assignment, knock on his door and his father's door. Plaintiff's assertion that Stehlik, Boyd, Martin, and Maraffino "effectively made no attempt to locate Abbatte" uses an unnecessary adverb and "argumentative language," which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Moreover, Plaintiff's assertion that all Stehlik, Boyd, Martin, and Maraffino did was drive to "Abbate's District of Assignment, knock on his door and his father's door" is not supported by the record. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). The evidence relied upon by plaintiff shows that IAD had learned that, after plaintiff signed the criminal complaint, Abbate had checked into a rehab facility. Sgt. Boyd testified, however, that he was instructed that he "cannot arrest or communicate with [Abbate] while [Abbate] is in rehab.." The City objects to plaintiff's Fact No. 41 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would

provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

42. They never even called Abbate, his father or his brother, all police officers, to advise or get assistance for Abbate to surrender. **Exhibit II,** p.71, L.14 - p.n, L.24; p.llO, Is.6-14; **Exhibit PP**, at City 00816,00838 - 00839, 03105; **Exhibit HH**, p.100, L.8 - p.l16, L.15; **Exhibit OO**, p.75, L.16 - p.82, L.18. At some point, Naleway even directed Stehlik to stop looking because Naleway assumed Abbate was in "treatment," despite the fact that during Abbate's tour on February 22, 2007, Abbate abruptly left work after receiving a phone call. **Exhibit II**, p.110, Is.6-14; **Exhibit HH**, p.l04, L.10- p.110, L.20; p.117, L.16 - p.126, L.l; p.130, L.5 - p.135, L.2; **Exhibit QQ**, p.210, L.20 - p.215, L.6; **Exhibit BB**, p.128, L.2 - p.l31, L.15; **Exhibit OO**, p.75, L.16 - p.82, L.18; **Exhibit RR**, p.188, L.23 - p.201, L.20.

ANSWER: The City denies that they never even called Abbate, his father or his brother, all police officers, to advise or get assistance for Abbate to surrender. Officer Stehlik stated that Sergeants Maraffino and Martin did not find Abbate at his house or at work (Exhibit II, p.72) (If he was not at home, they could not call him because he did not have a cell phone.) Officer Stehlik learned that Abbate was in a rehabilitation facility. (Exhibit II, p.110) In their depositions, the officers were never asked if they had called or thought of calling Abbate's father or brother. The City admits that Sergeant Marafino went to the address of Abbate's father and rang his doorbell. The City further admits that although there was a light on in the kitchen, there was no movement in the house. (Exhibit PP, City 03105; Exhibit HH, p.115) Officer Boyd learned that Abbate was in a rehabilitation facility and could not be contacted. (Exhibit OO, p.82) The City admits that Abbate left work after receiving a phone call, but objects to the characterization "abruptly" as an unnecessary adverb and "argumentative language," which is improper. *See Kleban v. S.Y.S Restaurant*

Mgmt, Inc., 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). The City admits that Naleway assumed that Abbate was in a treatment facility based on the fact that EAP had confirmed that it had contact with Mr. Abbate. (Exhibit HH, p.131). Further, the City admits that Naleway believed it was fruitless to continue to attempting to locate Abbate once it was determined that he may be in a treatment facility. (Exhibit HH, p. 131) The City objects to plaintiff's Fact No. 42 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

43. Even before the "search" started, and certainly at the time it was called off on the 23rd, lAD and OPS were well aware that Abbate was threatening various people's lives, and threats of false arrest and planting of drugs, and that he was otherwise desperate, and that the "treatment" was likely a ruse to shield him from investigation. **PSAF, ¶35**, ***supra***; **Exhibit OO**, p.66, L.9 - p.82, L.18; **Exhibit C,** at City 00253 - 00254, 00256 - 00257; **Exhibit PP**, at 00841 _ 00842; **Exhibit II**, p.71, L.14 - p.74, L.14; p.llO, Is.6-14; **Exhibit HH**, p.104, L.10 - p.ll0, L.20; p.117, L.16 - p.126, L.l; p.130, L.5 - p.l35, L.2; **Exhibit QQ**, p.210, L.20 - p.215, L.6; **Exhibit RR**, p.188, L.23 - p.20 1, L.20. lAD never got a warrant, even though they did not know where Abbate was and knew he was threatening people, armed and dangerous. Id; **Exhibit II**, p.75, L.8 - p.79, L.12.

ANSWER: The City admits that IAD and OPS were aware of allegations that "at some point somebody approached a bartender and wanted to buy the videotape, or get the videotape, pay for damages to the bar for the videotape." The City admits that OPS and the State's Attorney's Office were planning to investigate

further. The City admits that IAD never obtained a warrant for Abbate's arrest. The City denies that the record as cited shows that Abbate was "threatening various people's lives." The City denies that IAD and OPS were aware of allegations of threats as a fact, rather than as an allegation to be further investigated. The City denies that the record as cited shows that IAD or OPS knew that Abbate's treatment "was likely a ruse to shield him from investigation." The City objects to "otherwise desperate" as vague. Further, use of the phrase "otherwise desperate" and the use of quotes around "search" and "treatment" is "argumentative language," which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.) The City objects to plaintiff's Fact No. 43 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

44. When Abbate finally surrendered almost three weeks later on the misdemeanor simple battery complaint, the arrest report mentioned nothing of the physical evidence against Abbate, specifically the video of the incident or the photos of Karolina's injuries taken by OPS on February 21,2007. **Exhibit C**, at City 00334 - 00342. Furthermore, Karolina was never even given any type of notice of the Court Date by the arresting officer. **Exhibit F**; **Exhibit SS**, p.60, Is.2-19; **Exhibit II**, p.80, L.1 0 - p.82, L.20; **Exhibit AA.** The only materials from Abbate's arrest that were to be in the Court transmittal for the prosecution of Abbate were the arrest report, the "case report" that only identified "Tony" LNU and Karolina's signed complaint. **Exhibit TT**, p.49, L.18 - p.71, L.6.

ANSWER: The City denies that Abbate finally surrendered almost three weeks later on the

misdemeanor simple battery complaint. Plaintiff's assertion that Abbate "finally surrendered" includes an unnecessary adverb that indicates opinion, which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). Moreover, Plaintiff's assertion that Abbate "finally surrendered" suggests an inference from the arrest report showing only that Abbate was arrested, which is improper. *See Servin v. GATX Logistics, Inc.*, 187 FRD 561, 562 (N.D. Ill. 1999) (Gettleman, J.). The evidence relied upon by plaintiff is an arrest report which demonstrates that on March 14, 2007, Abbate was arrested. The arrest report does not show that Abbate "*finally surrendered*." (Plaintiff's Ex. C, City 00334-00342). The City further denies that the arrest report mentioned nothing of the physical evidence against Abbate. The evidence relied upon by Plaintiff does not support this assertion. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). Instead, the evidence relied upon by Plaintiff shows that the arrest report mentions that Plaintiff was injured and bruised, including swelling. Moreover, the arrest report includes Plaintiff's statement that Abbate "punched [her] about the head and upper body and kicked [her] about the upper body." (Plaintiff's Ex. C, City 00337). The City admits that the arrest report does not mention the video of the incident or include photos of Plaintiff's injuries taken by OPS on 2/21/07. The City denies that plaintiff was never even given any type of notice of the Court Date by the arresting officer. The evidence relied upon by

Plaintiff does not support this assertion. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). The evidence relied upon by plaintiff demonstrates that Sgt. Stehlik, who is listed on the arrest report as one of Abbate's arresting officers (Plaintiff's Ex. C, City 00338), testified that he contacted Plaintiff by phone and relayed to her Abbate's court date information. The City denies that the only materials from Abbate's arrest that were to be in the Court transmittal for the prosecution of Abbate were the arrest report, the "case report" that only identified "Tony" LNU, and Plaintiff's signed complaint. The evidence relied upon by Plaintiff does not support this assertion. *Zaborowski v. Dart*, 2011 WL 6660999, at * 1 ("The Court may disregard statements and responses that do not properly cite to the record."). The evidence relied upon by Plaintiff is Cpt. Joseph Boisso's deposition, where Cpt. Boisso states that he has "no knowledge of what went to the court" in Abbate's case. The evidence does not establish which documents were transmitted to the Court in Abbate's case. The City objects to plaintiff's Fact No. 44 as irrelevant for establishing municipal liability against the City because it concerns conduct subsequent to the incident—Abbate's attack on Plaintiff at Jesse's Shortstop Inn. "[S]ubsequent conduct cannot establish a pattern of violations that would provide 'notice to the cit[y] and the opportunity to conform to constitutional dictates.'" *Connick v. Thompson*, 131 S. Ct. 1350, 1360 n.7 (2011).

45. Lou Reiter, the Plaintiff's Law Enforcement Administrative, Organizational and Management procedures expert, opines generally that, based upon his wealth of knowledge of the Chicago Police Department and police organizational structures in general, and the breadth of his first hand experience with the Chicago Police Department developed over the last 20 years, that in the time frame of February of 2007 and for a substantial period of time prior, the City of Chicago Police Department had created an organizational environment where a Code of Silence and deficient administrative investigations and disciplinary procedures were present that would allow police officers to engage in misconduct with little fear of sanction. **Exhibit VV**, generally and at 10.

ANSWER: The City admits the assertions contained in Fact No. 45.

46. Dr. Steven Whitman, Plaintiffs expert epidemiologist and statistician, opines generally that, based in upon his statistical analysis of, in part, the rates of sustained findings in force related complaints for Chicago Police Officers from 1999 through 2004, as well as specific data rates for the 25th District (where the incident occurred), as well as the 11th and 20th Districts, in which Abbate had worked in the 5 years prior to 2007, that sustained rates for force related complaints against Chicago Police Officers over the 8 years prior to 2007 were statistically significantly lower than the national average sustained rate reported in the Bureau of Justice Statistics 2006 Citizens Complaints About Police Use of Force report for the national average for all departments (8%), or the national average for larger departments like Chicago (6%). In fact, the rate from 2000 through 2004 was alarmingly decreasing to as low as 0.5% in 2004! Amazingly, in the 25th District, from January of 2005 through February of2007, not one of the 147 excessive force complaints was sustained, and in the 11th and 20th Districts in which Abbate worked in the 5 years before February 2007, his co-workers received sustained findings only 1.2% of the time! **Exhibit UU.**

ANSWER: The City admits the assertions contained in Fact No. 46, with the exception of the use of "alarmingly" and "amazingly," and the use of an exclamation point to punctuate certain sentences, which are not Whitman's own choice of words or punctuation, even though plaintiff attributes them to him. The City objects that Plaintiff's use of "alarmingly" and "amazingly," and her use of an exclamation point to punctuate certain sentences are unnecessary adverbs and punctuation that are argumentative, which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.).

47. Finally, Tom Smith, the Chief Investigator at OPS from 1998 Plaintiff's Law Enforcement investigations expert, generally opines that, during his tenure and for the years thereafter through February 2007 while the structural and procedural framework of OPS remained the same, the rules and restrictions for OPS investigations caused direct interference with OPS being able to accomplish its stated mission to " ... establish the Public's trust in the Chicago Police Department through fair, objective, fact finding investigations into allegations of misconduct against its members ... [to] expose excessive force when it exists." **Exhibit GG**; **Exhibit WW.** More broadly, in Mr. Smith's considered opinion OPS was saddled with numerous restrictions on when, how and under what circumstances an investigation may occur, and then burdened by layers of Monday-morning quarterback reviews that delayed and/or reversed discipline. **Id**.

ANSWER: The City admits the assertions contained in Fact No. 47, with the exception of the use of "considered" to describe Mr. Smith's opinion, "saddled," "numerous," "burdened," and "Monday-morning quarterback reviews," which are not Smith's own choice of words, but which are attributed to him. The City objects that Plaintiff's use of these words and phrases are unnecessary adjectives and language that are argumentative, which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.).

48. On January 20, 2000, the Chicago City Council, by Alderman William Beavers, passed a resolution of findings regarding the failed environment of the Chicago Police Department leading to little fear of sanction for misconduct among police officers. **Exhibit XX.** On May 2, 2003, a jury impaneled here in the Northern District entered findings on verdicts against the City of Chicago that, as of February 2, 2001, the City of Chicago maintained widespread, pervasive de facto policies of not adequately investigating, disciplining, or prosecuting off-duty Chicago police officers who use excessive force against individuals. See Garcia v. City of Chicago, 01 C 8945 at **Docket Entry #256** and 2003 WL22175618 at *1 ("N.D. IlI., September 19,2003) (Holderman, J.).

ANSWER: The City denies that on January 20, 2000, the Chicago City Council, by Alderman William Beavers, passed a resolution of findings regarding the failed environment of the Chicago Police Department leading to little fear of sanction for misconduct among police

officers. The record cited indicates that Alderman Beavers introduced a resolution, not that it was passed. The record cited also does not contain "findings," but rather statements of opinions on the part of Alderman Beavers. Moreover, plaintiff's assertions mischaracterize the record cited by omission, insofar as the resolution proposed by Alderman Beavers "states that "BE IT RESOLVED, That the negotiating team include the Law Department, Police Department and any other persons, having involvement with the police contract, appear before a public hearing with the City Council Committee on Police and Fire, and take input into the negotiation process from citizens and members of the City Council." Exhibit XX. Plaintiff's assertions further mischaracterize the record in this case by omission, insofar as a public hearing was held for this purpose, *see* Def.'s Exhibit J, and the City Council ratified by ordinance an Agreement between the City of Chicago Police Department and the Fraternal Order of Police, Chicago Lodge No. 7 *see* Def.'s Exhibit K (ordinance) and Def.'s Exhibit L (Agreement), that replaced the Agreement between the City of Chicago Police Department and the Fraternal Order of Police, Chicago Lodge No. 7 that had expired on June 30, 1999, *see* Def.'s Exhibit M (Arbitration Award). The new Agreement contained provisions in Section 8.4 for the retention for a seven-year period of "not sustained files alleging criminal conduct or excessive force," and that "information contained in files alleging excessive force or criminal conduct which are not sustained may be used in future disciplinary proceedings to determine credibility and notice." Exhibit L. These provisions were not in the contract that had expired. *See* Def.'s Exhibit M. The City admits that on May 2, 2003, a jury impaneled here in the Northern District entered findings on verdicts against the City of Chicago that, as of February 2, 2001, the City of Chicago maintained a custom or practice of not adequately investigating, disciplining, or prosecuting off-duty Chicago police

officers who use excessive force against individuals. The City denies that the record cited includes the words "widespread" and "pervasive."

49. On July 1, 2003, the City of Chicago entered into a Collective Bargaining Agreement with the union representing Chicago Police Officers, and in that agreement, the City agreed that allegations would not be investigated without a sworn complaint from the citizen, despite the fact that no legal precedent existed at the time for that requirement. **Exhibit FF**, at p.279; **Exhibit YY**, at Appendix L; 50 ILCS 725/3.8 (Legislative History thereto, indicating affidavit requirement not enacted until January 1, 2004).

ANSWER: The City admits that on July 1, 2003, the City of Chicago entered into a Collective Bargaining Agreement with the union representing Chicago Police Officers, and in that agreement, the City agreed that allegations would not be investigated without a sworn complaint from the citizen. The City denies that the record cited states that no legal precedent existed at the time for that requirement.

50. After the imposition of the affidavit requirement, for the following 5 consecutive years including the year the CBA was enacted, the rate of unfounded complaints was 23.1 % in 2002 before the requirement was imposed, and jumped to 41 % in 2003 when it was it was first imposed, and then 44.3% in 2004, 41 % in 2005, and 41 % in 2006. **Exhibit ZZ.** Furthermore, after the imposition of this new policy, OPS did not maintain any statistics to assess the efficacy of the new affidavit rule, specifically the rate at which affidavit override decisions were made, approved or disapproved by the head of IAD or OPS. **Exhibit FF**, pp. 35-36; **Exhibit JJ**, pp.39, 42-43.

ANSWER: The City admits that after the enactment of the affidavit requirement, for the following five consecutive years including the year the CBA was enacted, the rate of unfounded complaints was 23.1 % in 2002 before the requirement was enacted and increased to 41 % in 2003 when it was it was first enacted, and then 44.3% in 2004, 41 % in 2005, and 41 % in 2006. The City objects to the use of "imposition" or "imposed," and "jumped" as unnecessary language that

is argumentative, which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.). The City admits that after the imposition of this new policy, OPS did not maintain any statistics concerning the new affidavit rule, specifically the rate at which affidavit override decisions were made, approved or disapproved by the head of IAD or OPS. The City objects to the use of "imposition" and "efficacy" as unnecessary language that is argumentative, which is improper. *See Kleban v. S.Y.S Restaurant Mgmt, Inc.*, 994 F. Supp. 932, 935-36 (N.D. Ill. 1998) (Bucklo, J.).

Respectfully submitted,

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