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

Larry Scott,)
)
 Plaintiff,)
)
 v.) No. 07 C 3684
)
 City of Chicago, et al.,)
)
 Defendants.)

MEMORANDUM ORDER

This Court has received the attached one-sentence "Certification of Indemnification," filed on behalf of the City of Chicago ("City") by its Corporation Counsel's office. Although the purpose of that document appears to be the elimination of any need to pursue Monell-related discovery and proof in this 42 U.S.C. § 1983 ("Section 1983") action against the and several of its police officers, it is inadequate for that purpose in several respects:

1. City's indemnification obligation must expressly be made both unconditional and irrevocable.
2. Because a successful Section 1983 action carries with it the potential for the plaintiff's recovery of fees and expenses under 42 U.S.C. § 1988, City's indemnification undertaking must extend to such an award as well (except of course to the extent that such fees and expenses are attributable to any award of punitive damages, for which City has no responsibility under City of Newport v. Fact

Concerts, Inc., 453 U.S. 247 (1981)).

3. Because municipal liability under Section 1983 gives rise to an award of nominal damages (not to exceed \$1) even in the absence of any compensatory damage award (see Carey v. Phipps, 435 U.S. 247 (1978)), City's undertaking should also add such nominal damages to the indemnification obligation, thus mooting the claim against City.

If those changes are made, this Court will entertain a motion to stay discovery against City looking toward its potential liability (as contrasted with the liability of the defendant officers), retaining City in the lawsuit only for purposes of assuring its compliance with its undertaking.



Milton I. Shadur
Milton I. Shadur
Senior United States District Judge

May 8, 2008