

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

PRINCE BILLS,)
)
 Plaintiff,)
)
 v.) No. 10 C 4051
)
 CITY OF HARVEY, et al.,)
)
 Defendants.)

MEMORANDUM ORDER

City of Harvey ("Harvey") and two codefendant Harvey police officers have filed their Answer to the Third Amended Complaint ("TAC") brought against them by Prince Bills ("Bills"). This memorandum order is issued sua sponte to address some flaws in the affirmative defenses ("ADs") that follow the Answer itself.

1. AD 1 is wholly evidentiary in nature, a detailed fact-intensive treatment that is at odds with the federal notice pleading concept that applies to plaintiffs and defendants alike. Equally importantly, AD 1 directly contradicts Bills' allegations in the TAC--an impermissible stance for an AD (see App'x ¶5 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001)).

2. Purported AD 2 is a disembodied statement of a legal conclusion, something that is really inappropriate as an AD. Even apart from that, AD 2 is also at odds with Bills' allegations (which must be taken as true for AD purposes, and which certainly allege willful and wanton

conduct on the part of the police officers).

3. AD 3's invocation of Monell ignores the fact that the TAC advances a substantial number of state law claims, as to which respondeat superior principles that are inapplicable to 42 U.S.C. §1983 claims may certainly apply. Accordingly all three ADs are stricken sua sponte. If defendants' counsel want to try again in any of those respects, they must seek to do so by an appropriate motion.



Milton I. Shadur
Senior United States District Judge

Date: February 11, 2011