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

Marcus Malewski,	)	
Plaintiffs,	)	**Case No: 14 C 4187**
	)	
v.	)	
	)	**Judge Ronald A. Guzmán**
Toni Preckwinkle, Thomas J. Dart,	)	
Cara Smith, and Cook County,	)	
Defendants.	)	

ORDER

For the reasons stated below, Toni Preckwinkle and Cook County's motion to dismiss [22] is granted in part and denied in part.

STATEMENT

Plaintiff alleges on behalf of himself and other similarly situated pretrial detainees that he was subjected to cruel and inhuman conditions from May 12, 2014 to May 16, 2014. Specifically, Plaintiff alleges that while a pretrial detainee at the Jail, he was not given food for 2 1/2 days, was forced to sleep in the common area of a cell block which was under construction without any mattress, pillows, or blankets, was moved after two hours' sleep to a day room where he again was required to sleep on the floor, and was frequently moved thereafter to various holding areas over several days, at least one of which did not have access to a bathroom, forcing Plaintiff to urinate on himself. (Compl., Dkt. # 1, ¶¶ 10-33.) In Count II, Plaintiff alleges a *Monell* claim against Toni Preckwinkle, President of the Cook County Board of Commissioners, and Cook County, stating that despite their awareness of severe overcrowding at Cook County Jail for decades, they have failed to provide adequate funding for the provision of cells and other basic necessities for pretrial detainees at the Jail or otherwise reduce the number of prisoners at the Jail. (Compl., Dkt. # 1, ¶ 25.) Plaintiff further alleges that as a result of the

policy and custom of underfunding the Jail, pretrial detainees "have been subjected to barbaric living conditions in direct violation of the Fourteenth Amendment." (*Id*. ¶ 36.)

Preckwinkle and Cook County ("Defendants") move to dismiss on the grounds that: (1) they are improper defendants; (2) and Plaintiff fails to sufficiently allege a *Monell* claim. As an initial matter, Cook County is an indispensable party to this suit because state law requires the county to pay judgments entered against the Sheriff's Office in its official capacity. *Carver v. Sheriff of LaSalle Cnty*., 324 F.3d 947, 948 (7th Cir. 2003). Therefore, it remains a party to the lawsuit at least as an indemnitor.

Defendants first contend that they cannot be liable for any constitutional violations because the Jail is under the sole supervision and control of the Sheriff, 55 Ill. Comp. Stat. 5/3-15003 *et seq*., who has final policymaking authority over jail operations. But, Plaintiff does not allege that Defendants' operation of the Jail is unconstitutional, he alleges that the Defendants' underfunding of the Jail is unconstitutional. The Court, therefore, denies the motion to dismiss on this ground. *See Mayes v. Elrod*, 470 F. Supp. 1188, 1195 (D.C. Ill. 1979) (denying motion to dismiss Cook County and its Board when their "alleged acts or omissions . . . control the [Sheriff's] Department's financing, and that level of financing then affects the Department's ability to maintain adequate conditions at the jail").

Defendants next argue that Plaintiff insufficiently alleges a *Monell* claim. Under *Monell v. Dep't of Social Servs*., 436 U.S. 658 (1978), a plaintiff seeking to hold a municipality liable for a § 1983 violation must show: "(1) an express policy that causes a constitutional deprivation when enforced; (2) a widespread practice, that, although unauthorized, is so permanent and well-settled that it constitutes a 'custom or usage' with the force of law; or (3) an allegation that

a person with final policymaking authority caused the injury." *Chortek v. City of Milwaukee*, 356 F.3d 740, 748 (7th Cir. 2004). Further, the official policy, custom or practice must be the moving force behind the deprivation of constitutional rights. *Teesdale v. City of Chi.*, 690 F.3d 829, 833 (7th Cir. 2012).

Viewing the allegations and all reasonable inferences in a light most favorable to the Plaintiff, the Court concludes that he has sufficiently plead a claim under *Monell*. Plaintiff alleges that: Defendants are responsible for authorizing construction and repairs of the Jail and funding its operations; they have been aware of severe overcrowding at the Jail for decades; despite this knowledge, due to a custom and practice of underfunding the Jail, Defendants have failed to provide adequate money to furnish pretrial detainees with cells, beds, bathrooms and other basic necessities, thus subjecting to "barbaric" living conditions; and as a direct and proximate result of Defendants' policy and custom to underfund the Jail, Plaintiff experienced unnecessary pain and suffering and was exposed to an unreasonable risk of serious harm. (Compl., Dkt. # 1, ¶¶ 5,6, 34-37.) These allegations suffice at this stage of the proceedings.

Finally, the Court grants the motion to dismiss to the extent it seeks to strike allegations of punitive damages as to Dart in his official capacity and Cook County. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981) (municipality will not be exposed to punitive damages because of the bad-faith actions of its officials, even from actions brought pursuant to § 1983).

Date: October 15, 2014

Ronald A. Guzmán

Ronald A. Guzmán
United States District Judge