

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

JERMAINE WILSON and DAMEON)	
SANDERS, individually and for a class,)	
)	
Plaintiffs,)	
)	
v.)	No. 14-cv-08347
)	
CITY OF EVANSTON, ILLINOIS,)	Honorable John Z. Lee
)	
Defendant.)	

**CITY OF EVANSTON'S RESPONSE TO PLAINTIFFS'
LOCAL RULE 56(A)(3) STATEMENT OF UNDISPUTED FACTS**

Defendant, City of Evanston (“Evanston”), by and through its attorneys, Tribler, Orpett & Meyer, P.C., states the following for its Response to Plaintiff’s Local Rule 56(1)(3) Statement of Undisputed Facts:

I. The Parties, Jurisdiction, and Venue

1. Plaintiffs Jermaine Wilson and Dameon Sanders bring this case individually and, pursuant to the order of August 30, 2017, for the following classes:

Class I, Substantive Due Process: All persons whose property, following an arrest on and after October 23, 2012, was held at EPD and destroyed or otherwise disposed of, before court proceedings in connection with which such property was seized or otherwise taken possession of reached a final, appealable judgment, or were terminated without reaching such a judgment.

Class II, Procedural Due Process: All persons whose property, following an arrest on and after October 23, 2012, was held at EPD and destroyed or otherwise disposed of, while that person remained in the custody of a jail or penitentiary for over thirty days.

RESPONSE: Admit.

2. Defendant City of Evanston is an Illinois municipal corporation located in the Northern District of Illinois. (Exhibit 1, Answer to Amended Complaint, ¶ 3, ECF No. 58 at 1.)

RESPONSE: Admit.

3. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1333 to assert claims arising under 42 U.S.C. § 1983. (Exhibit 1, Answer to Amended Complaint, ¶ 1, ECF No. 58 at 1.)

RESPONSE: Admit.

II. The Municipal Policy and Its Application to the Named Plaintiffs

4. The City of Evanston requires its police officers to search arrestees and seize and inventory the arrestees' property. (Exhibit 2 at 17, City of Evanston, General Order 10.1, Section IX.F(1)(a).)

RESPONSE: Deny. Defendant objects to the use and admission of Exhibit 2 and moves to strike Exhibit 2 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving said objections, the City admits arrestees are searched upon their arrest and certain personal property is inventoried pursuant to the terms of the Prisoner Property Receipt identified on Plaintiffs' Exhibits 4 and 11 which is the operative policy for purposes of this litigation. (Dkt. #75, pp. 2-5.)

5. Evanston will return all property (other than contraband or items subject to forfeiture proceedings) to an arrestee who is released from the police station, either without a charge or after posting bond at the police station. (Exhibit 2 at 22, City of Evanston, General Order 10.1, Section XIV.B.)

RESPONSE: Deny. Defendant objects to the use and admission of Exhibit 2 and moves to strike Exhibit 2 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving said objections, the City admits arrestees are searched upon their arrest and certain personal property is inventoried pursuant to the terms of the Prisoner Property Receipt identified on Plaintiffs' Exhibits 4 and 11 which is the operative policy for purposes of this litigation. (Dkt. #75, pp. 2-5.)

6. For an arrestee who is not released from the police station, Evanston will transfer custody of the arrestee to the Sheriff of Cook County. (Exhibit 2 at 12-13, City of Evanston, General Order 10.1, Section VII.)

RESPONSE: Deny. Defendant objects to the use and admission of Exhibit 2 and moves to strike Exhibit 2 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving said objections, the City admits arrestees are searched upon their arrest and certain personal property is inventoried pursuant to the terms of the Prisoner Property Receipt identified on Plaintiffs' Exhibits 4 and 11 which is the operative policy for purposes of this litigation. (Dkt. #75, pp. 2-5.)

7. When Evanston transfers an arrestee to the custody of the Sheriff of Cook County, Evanston will also transfer to the Sheriff of Cook County the following items from an arrestee's property:

- a. United States currency
- b. United States government issued identification
- c. Plain wedding band (no engraving or stones)
- d. Keys
- e. Outer garment
- f. Prescription medication

- g. Prescription eyeglasses
- h. Legal documents (soft cover only)
- i. Shoelaces
- j. Bible or Koran (soft cover only)

(Exhibit 3, Email, March 24, 2016, Subject: Phase II of Prisoner Property—Cook County Sheriff's Office Intake.)

RESPONSE: Defendant objects to the use and admission of Exhibit 3 and moves to strike Exhibit 3 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving these objections, Defendant admits when Evanston transfers an arrestee to the custody of the Sheriff of Cook County, it will also transfer to the Sheriff of Cook County certain items of arrestee property allowed by the Sheriff.

8. Evanston will retain in its custody all arrestee property other than the property enumerated in Paragraph 7. (Exhibit 4, Property Inventory Slip, "Notification Regarding Your Property.")

RESPONSE: Deny. Defendant admits it will retain and inventory certain property that will not be accepted by the Cook County Department of Corrections pursuant to the terms of the Prisoner Property Receipt as contained in Exhibit 4.

9. Plaintiff Jermaine Wilson was arrested by members of the Evanston police department on July 10, 2013. (Exhibit 1, Answer to Amended Complaint, ¶ 15, ECF No. 58 at 4.)

RESPONSE: Admit.

10. At the time of his arrest on July 10, 2013, plaintiff Wilson had in his possession a jeweled ring, with a replacement value of one thousand dollars, a phone, replacement value of two hundred dollars, and, in a backpack, shoeshine equipment and shoeshine supplies. (Exhibit 5, Wilson Interrogatory Answers, ¶ 3.)

RESPONSE: Deny. The City admits Wilson's Prisoner Property Receipt marked as Exhibit 4 identifies 2 wedding rings, 1 T-Mobile cell phone, 1 backpack and other miscellaneous items. The City admits Wilson's Answer to Interrogatory No. 3 identifies a ring with replacement value of about one thousand dollars, a phone with a replacement value of about \$200 dollars and shoe shine equipment and supplies (in back pack) with a replacement value of about \$200. Wilson failed to produce any further evidence regarding the alleged value of his property nor has any further evidence been identified by Plaintiff. Defendant further admits that while the Prisoner Property Receipt identifies 2 rings, Wilson secured possession of at least one ring and admitted possession at this deposition. (Ex. 6, Wilson Dep. p. 41, lines 3-24.)

11. Following Wilson's arrival at the Evanston police station, and pursuant to Evanston Police Department General Order 10.1, Section F(1)(a), an Evanston police officer seized and inventoried Wilson's personal property and handed him Exhibit 5, a "property inventory slip." (Exhibit 6, Wilson Dep. 32:11-18.)

RESPONSE: Deny. Defendant objects to the use and admission of Exhibit 2 – Evanston Police Department General Order and moves to strike Exhibit 2 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving said objections, the City admits arrestees are searched upon their arrest and certain personal property is inventoried pursuant to the terms of the Prisoner Property Receipt identified on Plaintiffs' Exhibits 4 and 11 which is the operative policy for purposes of this litigation. (Dkt. #75, p. 2-5.) Defendant further admits Wilson received Exhibit 4 – Prisoner Property Receipt and acknowledged receipt by signing it. (Ex. 6, Wilson Dep. p. 32, lines 11-18.)

12. Wilson was subsequently transferred to the custody of the Sheriff of Cook County and remained in custody at the Cook County Jail (Exhibit 6, Wilson Dep. 53:5-14) until October 15, 2014 when he was released after receiving a sentence of 364 days, time considered served. (Exhibit 7, Evanston Police Department Court Supplementary Report, October 15, 2014.)

RESPONSE: Deny. Defendant objects to the use and admission of Exhibit 7 and moves to strike Exhibit 7 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving said objections, Defendant admits Wilson was subsequently transferred to the custody of the Sheriff of Cook County but denies that he remained in Custody until October 15, 2014. Wilson was out on bond on February 11, 2014 and March 19, 2014, according to the criminal court docket (EV 36).

13. Defendant City of Evanston destroyed plaintiff Wilson's property on April 30, 2014. (Exhibit 8, Evanston Police Department Chain of Custody Report, EV384.)

RESPONSE: Defendant admits certain property identified on Wilson's Prisoner Property Receipt (Exhibit 4) was destroyed on April 30, 2014 pursuant to the terms of the Prisoner Property Receipt.

14. Plaintiff Dameon Sanders was arrested by members of the Evanston police department on July 25, 2013. (Exhibit 3, Answer to Amended Complaint, ¶ 22, ECF No. 58 at 5.)

RESPONSE: Admit.

15. At the time of his arrest on July 25, 2013, plaintiff Sanders had in his possession two cellphones, a CTA card, a LINK card, a hat, a belt, and a prepaid debit card with a value of about five hundred dollars. (Exhibit 9, Sanders's Interrogatory Answers, ¶ 4; Exhibit 10, Sanders Dep. 38:3-4, 40:16-17.)

RESPONSE: Deny. The City admits Sanders's Prisoner Property Receipt marked as Exhibit 11 identifies a CTA card, a LINK card, a hat, a belt and a debit card. (Ex. 11.) The City further admits Sanders's Answer to Interrogatory No. 4 and referenced depositions pages contained in Exhibit 10 identifies the aforementioned property referenced in paragraph 15 and the approximate value contained on the debit card. Sanders failed to produce any further evidence regarding the alleged value of his property nor has any further evidence been identified by Plaintiff.

16. Following Sanders's arrival at the Evanston police station, and pursuant to Evanston Police Department General Order 10.1, Section F(1)(a), an Evanston police officer seized and inventoried Sanders's personal property and handed him Exhibit 11, a "property inventory slip." (Exhibit 10, Sanders Dep. 29:11-30:5.)

RESPONSE: Deny. Defendant objects to the use and admission of Exhibit 2 – Evanston Police Department General Order and moves to strike Exhibit 2 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Subject to and without waiving said objections, the City admits arrestees are searched upon their arrest and certain personal property is inventoried pursuant to the terms of the Prisoner Property Receipt identified on Plaintiffs' Exhibits 4 and 11 which is the operative policy for purposes of this litigation. (Dkt. #75, pp. 2-5.) Defendant further admits Sanders received Exhibit 11 – Prisoner Property Receipt.

17. Sanders was subsequently transferred to the custody of the Sheriff of Cook County and remained in custody at the Cook County Jail (Exhibit 10, Sanders Dep. 49:15-18), until he was sent to the penitentiary (Exhibit 10, Sanders Dep. 34:4-6) in November of 2013. (Exhibit 12,

Docket Entries, Circuit Court of Cook County.)

RESPONSE: Admit.

18. Defendant City of Evanston destroyed plaintiff Sanders's belt, CTA cards, and debit card on April 8, 2014. (Exhibit 13, Evanston Police Department Chain of Custody Report, EV389.)

RESPONSE: Defendant admits certain property identified on Sanders' Prisoner Property Receipt (Exhibit 11) on April 8, 2014.

III. Notice about Disposition of Property

19. Before 2012, Evanston provided arrestees with a "Prisoner Property Receipt" in the form attached as Exhibit 14. (Exhibit 15, Wasowicz Dep. 15:13-21.) This form included the following statement:

I understand that any demand for this property shall be made within 90 days from the date hereof and that unclaimed property will be disposed of as provided by statute. I hereby certify that the above list is a correct record of items removed from my person at the time I was arrested.

(Exhibit 14) (emphasis added.)

RESPONSE: Admit.

20. In 2011, the City of Evanston became aware that arrestees were unable to appear in person at the Evanston Police Department to retrieve their property. (Exhibit 15, Wasowicz Dep. 13:3-12.)

RESPONSE: Deny. The referenced pages of Wasowicz's deposition transcript, including introductory questions for context, state as follows:

Q. Now were you involved in changing the prisoner property receipt form?

A. Yes

Q. How did you become involved in doing that?

A. As part of my duties overseeing the property bureau, when I first arrived in Evanston one of the things that I saw on a very regular basis was

that individuals who were looking to reclaim property, but were unable to get to the police department themselves would either contact the property office or they would have somebody contact the property office on their behalf and ask what was needed to be done to be able to reclaim their property. (Ex. 15 13:3-12.)

Defendant further admits Wasowicz answer continues on Ex. 15 13:13-24, 14:1-24 and 15:1-12 as follows:

And the process at the time, which is still a valid process, but the process at the time typically was to refer the individuals who was in the county jail to a social worker at the jail. Obtain a form from the Cook County Sheriff's jail division on which they could designate someone to pick up the property in their place. The jail would have somebody notarize that form. And then they would have somebody representing them obtain that form from the jail and come to the police department to present that form to obtain the property. One other situation that would arise frequently was that if somebody were not necessarily in custody at the jail, but was under the sheriff's department's electronic monitoring program, they may contact us wanting to know about coming in to get their property. At the time the instructions generally were to instruct them to get – to write a letter authorizing somebody else to pick their property up. And to have that letter notarized and then have the person bring that property – that letter to the police department in order to obtain the property. So basically two processes that were in place. Most burdensome being for individuals on an electronic monitoring program. I had any number of conversations with individuals myself who would tell me that they could not make arrangements with the sheriff's department to leave their homes to go some place to have a letter notarized. So that requirement was somewhat burdensome for them. After seeing that process in place and seeing some of the issues with that process, I recalled that from working in Skokie we had a process in place to allow somebody to designate a person to pick up their property in their absence. And it was at that point that I made a decision to look at revising the prisoner property form to include and give an arrestee the ability to at the time of their arrest designate someone to pick their property up and much more easily facilitated the return of that property rather than some of the previous requirements that we had had for notarized letters and documents which were proving problematic for people.

21. In 2012, Evanston modified the “prisoner property receipt” to include explicit directions that an arrestee could designate an agent to retrieve their property. (Exhibit 15, Wasowicz Dep. pp. 14-15, lines 22-24; 1-12.)

RESPONSE: Defendant objects to the term “directions” as used by Plaintiffs and denies it

directed or in any way mandated an arrestee to designate an agent to retrieve their property. Defendants admit that in 2012, Evanston revised its Prisoner Property Receipt and one of the revisions included the option for arrestees to designate an agent to retrieve their property for the reasons stated by Wasowicz as referenced in Defendant's response to paragraph 20 and contained in Ex. 15. (Exhibit 15, Wasowicz Dep. p 13, lines 3-24; p.14, lines 1-24 and p. 15, lines 1-12.

22. In addition to providing explicit instructions about designating an agent to retrieve property, Evanston modified its procedure in 2012 to shorten from 90 days to 30 days the time in which an arrestee could retrieve personal property. (Exhibit 15, Wasowicz Dep. 19:16-21.)

RESPONSE: Admit.

23. Evanston shortened the time in which an arrestee could retrieve personal property "to call attention to the fact that an individual needed to take action sooner rather than later to reclaim their property." (Exhibit 15, Wasowicz Dep. 19:19-21.)

RESPONSE: Defendant admits Wasowicz testified consistently with the quote in paragraph 23, but denies that was the only reason for the shortened time period.

24. The "Prisoner Property Receipt" (Plaintiffs' Exhibit 4) that Evanston has provided to arrestees throughout this litigation includes the following:

NOTIFICATION REGARDING YOUR PROPERTY

Certain property in your possession, will not be accepted by the Cook County Department of Corrections when you are transported to court for your bond hearing. These items are marked above with a checkmark. In order to protect your property, we have inventoried them with our Property Bureau. You or your designee will have 30 days from the date of your arrest to retrieve these items. If you do not retrieve these items within the 30 days they will be disposed of as provided by statute. THIS IS THE ONLY NOTICE YOU WILL RECEIVE ABOUT YOUR PROPERTY.

(Exhibit 4.)

RESPONSE: Admit.

25. The above-quoted “notification regarding your property” is the only notice that Evanston provides to arrestees about what will happen to their property if it is not claimed within 30 days after arrest. (Exhibit 15, Wasowicz Dep. 20:21-21:2.)

RESPONSE: Defendants admit Wasowicz testified consistent with the content contained in paragraph 25, but deny that is the only notice Evanston provides to arrestees as Plaintiffs concede in their Second Amended Complaint that the City also provides the following notice on its website in pertinent part:

Arrestees that are being transferred to the county jail system may have property that will not be accepted by the county. In these cases, the property is inventoried and held by the Property Bureau. Arrestees are provided notice in writing of the property being held and have 30 days to claim their property. Arrestees may also designate someone to claim their property for them.

See also Plaintiffs’ Exhibits 16-18.

26. The City of Evanston posts the following information about arrestee property on its website, www.cityofevanston.org:

Arrestee Property

Arrestees that are being transferred to the county jail system may have property that will not be accepted by the county. In these cases, the property is inventoried and held by the Property Bureau. Arrestees are provided notice in writing of the property being held and have 30 days to claim their property. Arrestees may also designate someone to claim their property for them.

Property Disposal

Unclaimed/unidentified property will be disposed of in accordance with state and local statutes and in most instances will not be held longer than six months after recovery. In some cases property will be disposed of sooner:

Arrestee Notified Prior to Transfer to County	30 days
Identified Owner Notified by Phone or Mail	60 days
Unidentified Owner	90 days
Identified Owner / Unable to Locate or Notify	180 days

Under unusual circumstances, property owners may make a written request for an extension of the holding period. These requests will be evaluated on a case-by-case

basis.

(Plaintiffs' Exhibit 16 at 1-2; Exhibit 17 at 1-2; Exhibit 18 at 1-2.)

RESPONSE: Defendant admits this language is contained in Exhibits 16-18, but deny this is the full content of the referenced exhibits.

27. Before it disposes of arrestee property, the City of Evanston does not seek to determine if the arrestee has been held in custody for the 30-day period following his arrest. (Exhibit 15, Wasowicz Dep. 33:22-34:4.)

RESPONSE: Deny. The City denies Mr. Wasowicz testified consistently with the content of paragraph 27 within Exhibit 15 pages 33-34 as Plaintiffs contend.

IV. "Provided by Statute"

28. At all times relevant, there has been in force and effect in the City of Evanston a municipal ordinance entitled "Possession and Disposition of Lost or Stolen Property," Evanston Code of Ordinances, Chapter 7, Section 9-7-1. (Exhibit 19 at 1.)

RESPONSE: Deny. Defendant denies Chapter 7 of Evanston Code of Ordinances is entitled "Possession and Disposition of Lost or Stolen Property." Defendant admits that Chapter 7 is entitled "Lost, Stolen Property" and further admits Section 9-7-1 of Chapter 7 is entitled "POSSESSION AND DISPOSITION OF LOST OR STOLEN PROPERTY." (Exhibit 19.)

29. Section 9-7-1(A) requires that any property "seized or taken" by Evanston police officers shall be held by Evanston's "custodian of lost or stolen property" (Exhibit 19 at 1) and requires the custodian to store the "seized or taken" property for "sixty (60) days from the date of the final disposition of the court proceedings in connection with which such property was seized or otherwise taken possession of." (Exhibit 19 at 2.)

RESPONSE: Deny. Defendant denies Section 9-7-1(A) requires "any" property "seized or

taken” by Evanston police officers to be held by Evanston’s “custodian of lost or stolen property” and for the custodian to store the “seized or taken” property for “sixty (60) days from the date of the final disposition of the court proceedings in connection with which such property was seized or otherwise taken possession of.” Defendant denies this is an accurate reading of Exhibit 19 Section 9-7-1(A) entitled “POSSESSION AND DISPOSITION OF LOST OR STOLEN PROPERTY” and further denies it is an accurate reflection of the content contained within Exhibits 16-18 regarding the handling of various types of property.

30. Defendant City of Evanston has construed the phrase “final disposition of the court proceedings” in Section 9-7-1 to mean when a criminal matter has reached a final, appealable judgment. (ECF No. 75, Mem.Op., August 30, 2017 at 11.)

RESPONSE: Defendant admits paragraph 30, but denies Section 9-7-1 creates a property interest as Plaintiffs claim and/or applies to Plaintiffs’ property. (Dkt. # 75, p. 11.)

31. The ordinance provides that the proceeds of any sale of property subject to the ordinance “shall be paid by the custodian of lost and stolen property to the Police Pension Fund of the City.” (Exhibit 19 at 2, Section 9-7-4.)

RESPONSE: Deny. Defendant denies Section 9-7-4 states the content contained within paragraph 31. Defendant admits Section 9-7-4 contained within Exhibit 19 states:

The proceeds of any sale made under the provisions of this Chapter [Chapter 7 – Lost, Stolen Property], after deducting the costs of storage, advertising, selling and other expenses incident to and the handling or selling of such property, shall be paid by the custodian of lost and stolen property to the Police Pension Fund of the City established pursuant to Section 1-9-7 of this Code.

32. Defendant contends that Section 9-7-1 does not apply to arrestee property. (Defendant’s Supplemental Brief, ECF No. 72 at 1-2; Exhibit 15, Wasowicz Dep. 42:21-43:3: “I have never found an Evanston ordinance addressing it.”)

RESPONSE: Admit. Defendants further refer to Plaintiffs' Exhibits 4 and 11 describing the terms for which Plaintiff's property was to be held, Plaintiffs' Exhibits 16-18 describing various classifications of property and the handling of such property dependent upon its classification and Plaintiffs' deposition testimony in which they concede their property was not lost or stolen. (Exhibit 6, Wilson Dep., pp. 32-33, lines 24;1-3; Exhibit 10, Sanders Dep., p. 29, lines 13-20).

33. At all times relevant, there has been in force and effect a statute of the State of Illinois known as the "Law Enforcement Disposition of Property Act" and compiled as 765 ILCS 1030/1, et seq.

RESPONSE: Defendants admit the existence of the statute. Defendant denies it applies to Plaintiffs' property.

34. The "Law Enforcement Disposition of Property Act" applies to property in the custody of a police department that has been abandoned, 765 ILCS 1030/1, and requires the custodian to "make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof." 765 ILCS 1030/2(a).

RESPONSE: Deny. Defendant states the Law Enforcement Disposition of Property Act speaks for itself and is the best evidence of the content of the statute. Defendant denies that the sections of the statute as identified and cited in paragraph 34 is an accurate reading of the full statute and reflect the full application of the statute as Section 1030/1 provides "This Act is applicable to all personal property of which possession is transferred to a police department ... under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen or otherwise illegally possessed ..." Similarly, Section 1030/2(a) provides "Such property believed to be abandoned, lost or stolen or otherwise illegally

possessed shall be retained in custody of the sheriff ... which shall make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof.

35. The “Law Enforcement Disposition of Property Act” establishes a six-month period for the police department to ascertain “the identity or location of the owner or other person entitled to possession of the property” before selling the property at public auction or, if the property is worth less than one hundred dollars, donating it. 765 ILCS 1030/3.

RESPONSE: Deny. Defendant states the Law Enforcement Disposition of Property Act speaks for itself and is the best evidence of the content of the statute. Defendant denies that the section of the statute as identified and cited in paragraph 35 is an accurate reading of the full statute and reflects the full application of the statute.

36. The “Law Enforcement Disposition of Property Act” does not provide any compensation to the person whose property has been sold. 765 ILCS 1030/4 provides as follows:

Proceeds of the sale of the property at public auction, less reimbursement to the law enforcement agency of the reasonable expenses of custody thereof, shall be deposited in the treasury of the county, city, village or incorporated town of which government the law enforcement agency is a branch.

RESPONSE: Admit.

37. Evanston entered into a contract with PropertyRoom.com, Inc. in 2009 that, inter alia, provides a mechanism for disposing of unclaimed arrestee property. (Exhibit 20.)

RESPONSE: Defendant objects to the use and admission of Exhibit 20 and moves to strike Exhibit 20 for the reasons stated in Defendant City of Evanston’s Motion to Strike Certain Exhibits Attached to Plaintiffs’ Local Rule 56(a)(3) Statement of Undisputed Facts. Defendant further denies said contract was specifically for disposal of unclaimed arrestee property.

38. Evanston receives a portion of any sales of detainee property made by

PropertyRoom.com, Inc. (Exhibit 20 at 3, ¶ 5.)

RESPONSE: Defendant objects to the use and admission of Exhibit 20 and moves to strike Exhibit 20 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Defendant further denies that the contract with PropertyRoom.com was specifically for sale of detainee property. Defendant further denies any of Plaintiffs' property was sold as Plaintiffs concede their unclaimed property was destroyed. (See Plaintiffs' SOF ¶13, Ex. 8 and Plaintiffs' SOF ¶18, Ex. 13.)

39. Evanston, as the "Owner," represented in its above-referred contract with PropertyRoom.com (the "Buyer") the following:

Owner has taken all actions under applicable law that are required for Owner to auction the Property or to transfer title to the Property to Buyers (including, without limitation, all notice requirements and the like required prior to the sale of Property at auction under local statute or municipal code).

(Exhibit 20 at 6, ¶ 10(b).)

RESPONSE: Defendant objects to the use and admission of Exhibit 20 and moves to strike Exhibit 20 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts. Defendant further denies it was the owner of Plaintiffs property and that Plaintiffs' property was auctioned for sale. Plaintiffs concede their unclaimed property was destroyed. (See Plaintiffs' SOF ¶13, Ex. 8 and Plaintiffs' SOF ¶18, Ex. 13.)

V. The Feasibility of Retaining Arrestee Property Pending Final Disposition of the Criminal Case

40. Defendant represented by letter dated February 6, 2018 that it would voluntarily retain unclaimed arrestee property during this litigation and would not sell or destroy any such

property. (Exhibit 21, Letter Ford to Flaxman, February 6, 2018.)

RESPONSE: Defendant objects to the use and admission of Exhibit 21 and moves to strike Exhibit 21 for the reasons stated in Defendant City of Evanston's Motion to Strike Certain Exhibits Attached to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts.

Respectfully submitted,

s/ William B. Oberts

One of the Attorneys for City of Evanston

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant, City of Evanston's Response to Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts, was served upon:

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service was accomplished pursuant to ECF as to Filing Users and complies with LR 5.5 as to any party who is not a Filing User or represented by a Filing User by mailing a copy to the above-named attorney or party of record at the address listed above, from 225 W. Washington Street, Suite 2550, Chicago, IL 60606, on the 30th day of November, 2020, with proper postage prepaid.

s/ William B. Oberts
an Attorney