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

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| 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. | ) | |

**DEFENDANT CITY OF EVANSTON'S MOTION TO STRIKE CERTAIN EXHIBITS ATTACHED 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., hereby moves this Honorable Court to pursuant to Rule 56(c)(4) of the Federal Rules of Civil Procedure and Federal Rule of Evidence 602, to strike certain exhibits attached to Plaintiffs' Local Rule 56 (a)(3) Statement of Undisputed Facts in support of their Motion for Summary Judgment. In support, Defendants state as follows:

A court may only consider admissible evidence when ruling on a motion for summary judgment. *Gunville v. Walker,* 583 F. 3d 979, 985 (7th Cir. 2009). There is a difference between discoverable and admissible. Any statements or responses that contain legal conclusions or argument, are evasive, contain hearsay or are not based on personal knowledge, are irrelevant, or are not supported by evidence in the record should not be considered by the Court in ruling on a summary judgment motion.

Federal Rule of Civil Procedure 56(c)(4) and Federal Rule 602 require testimony to be based on personal knowledge. Exhibits 3, 20, and 21 of Plaintiffs' Local Rule 56 (a)(3) Statement

of Undisputed Facts (Dkt. # 152) fail to comply with both FRCP 56 and 602, and should be stricken because they lack foundation or are improper hearsay.

**Ex. 2: General Orders**

The policy at issue within this litigation is the City's policy as contained within its Prisoner Property Receipt (Dkt. #75, p. 2-5, Plaintiffs' Exhibits 4 and 11.) Plaintiffs base certain alleged Undisputed Statements of Facts upon the City of Evanston's General Orders seeking to shift the premise of their policy argument to an alleged duty derived from and/or violation of General Orders. The General Orders are not admissible as no foundation has been established for their admissibility. No witness has testified to the General Orders of the City of Evanston. Furthermore, violations of state statutes, local ordinances, or administrative department regulations do not give rise to an action under section 1983, unless the rights are guaranteed under the United States Constitution. See *Davis v. Scherer*, 468 U.S. 183, 194 (1984); *Thompson v. City of Chicago*, 472 F.3d 444, 455 (7th Cir. 2006); *Kraushaar v. Flanigan*, 45 F.3d 1040, 1048-49 (7th Cir. 1995); *Klein v. Ryan*, 847 F.2d 368, 374 (7th Cir. 1988). Therefore, whether any Evanston General Orders are irrelevant to Plaintiffs section 1983 claims. Fed. R. Evid. 401 & 402. Plaintiffs cannot present evidence of an obligation or breach thereof derived from General Orders as such would be confusing to the jury and unfairly prejudicial to Defendant. Fed. R. Evid. 403. See *Walker v. City of Chicago*, 1992 WL 317188, *4 (N.D. Ill. Oct. 27, 1992) (J. Williams).

**Ex. 3: Emails**

Plaintiff's Ex. 3 consists of three separate emails between individuals, none of whom have been deposed to testify regarding the contents of these emails or authenticate the emails themselves. As such, the emails themselves are hearsay and inadmissible. Since the court may only

consider admissible evidence in a motion for summary judgment, Ex. 3 should be stricken, as it lacks foundation and is improper hearsay.

**Ex. 7: Evanston Police Department Court Supplementary Report**

Plaintiffs' Ex. 7 should be stricken because it is impermissible hearsay. *Jordan v. Binns*, 712 F. 3d 1123, 133 (7th Cir. 2013)(explaining that "police reports have generally been excluded except to the extent to which they incorporate firsthand observations of the officer.")(quoting FED.R. EVID. 803(8)).

**Ex. 20: Contract with Propertyroom.com**

Plaintiffs' Ex. 20 is a contract between the City of Evanston and PropertyRoom.com, Inc. None of the signatories or parties to this contract have offered any testimony regarding this document. Therefore, the document lacks foundation, is improper hearsay, and inadmissible. A court may only consider admissible evidence in a motion for summary judgment. Therefore, Ex. 20 should be stricken, as it lacks foundation and is improper hearsay.

**Ex. 21: Letter from Ford to Flaxman**

Plaintiffs' Ex. 21 is a letter from the Assistant City Attorney, Henry Ford, Jr., to Plaintiff's counsel, Kenneth Flaxman. Mr. Ford has never testified regarding the contents of this letter. Moreover, neither attorney has been identified as a witness to be called at trial in this matter. Therefore, there is no opportunity for any disclosed witness to lay a proper foundation for this document and it should be stricken.

## CONCLUSION

WHEREFORE, for all the reasons stated herein, the City of Evanston hereby moves that Plaintiffs' Exhibits 3, 7, 13, 20, and 21 attached to their Local Rule 56 (a)(3) Statement of

Undisputed Facts (Dkt. # 152) in support of their Motion for Summary Judgment be stricken, and for any further relief this Honorable Court deems just.

Respectfully submitted,

s/ William B. Oberts
One of the Attorneys for City of Evanston

William B. Oberts, Esq. – ARDC # 6244723
Amy M. Kunzer, Esq. – ARDC #6293176
TRIBLER ORPETT & MEYER, P.C.
225 West Washington Street, Suite 2550
Chicago, Illinois 60606
(312) 201-6400
wboberts@tribler.com

**CERTIFICATE OF SERVICE**

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

Kenneth N. Flaxman
Joel A. Flaxman
Kenneth N. Flaxman, P.C.
200 S. Michigan Avenue, Suite 201
Chicago, IL 60604
(312) 427-3200
knf@kenlaw.com
jaf@kenlaw.com

Nicholas Cummings
City of Evanston, Corporation Counsel
2100 Ridge Ave.
Evanston, IL 60201
(847) 448-8094
ncummings@cityofevanston.org

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