

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

Jermaine Wilson and Dameon)	
Sanders, individually and for a class)	
)	
<i>Plaintiffs,</i>)	14-cv-8347
)	
-vs-)	(Judge Lee)
)	
City of Evanston, Illinois,)	
)	
<i>Defendant.</i>)	

PLAINTIFFS' LOCAL RULE 56.1(b) STATEMENT

Plaintiffs submit the following pursuant to Local Rule 56.1(b):

1. Jermaine Wilson and Dameon Sanders ("Plaintiffs") bring this case individually, pursuant to the August 30, 2017 order, and on behalf of the following two 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 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.

See (Ex. 1, Mem. Op. and Order, p. 30, Dkt. # 75 (entered August 30, 2017)).

Response: Agree.

2. The City of Evanston is a municipal corporation, organized and existing under the laws of the State of Illinois. (Ex. 2, City's Answer and Affirm. Defenses to 2d. Am. Compl. ¶ 3 (Dkt. #58.)

Response: Agree.

3. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1343, as the case involves an alleged deprivation of a right secured by the Constitution of the United States under 42 U.S.C. §1983. (Ex. 2, ¶1)

Response: Agree.

4. Venue is proper under 28 U.S.C. §1391(b) as the City resides in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. (Ex. 2, ¶3).

Response: Agree.

5. On October 23, 2014, Wilson filed a Complaint alleging a deprivation of rights secured by the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. (Dkt. #1, p. 2 ¶7.)

Response: Agree.

6. On May 12, 2015, Wilson filed an Amended Complaint alleging a deprivation of rights secured by the Fourteenth Amendment of the United States Constitution. (Dkt. #26 p. 7, ¶31). Wilson's Amended Complaint also alleged a Fifth Amendment claim contending that "plaintiff and those similarly situated have been deprived of property without just compensation." (Dkt. #26, p.8 ¶32)

Response: Agree.

7. The City moved to dismiss Wilson's Fifth and Fourteenth Amendment claims contained within his Amended Complaint. Dkt. #31.

Response: Agree.

8. [a] Wilson's brief in opposition to the City's motion to dismiss referred to a Fourth Amendment violation, but Wilson's Amended Complaint made no reference to the Fourth Amendment or an illegal search or seizure. [b] Therefore, the Court construed Wilson's Amended Complaint as alleging only Fifth and Fourteenth Amendment violations. See Mem. Op. Dkt. # 40, p. 3, (entered January 28, 2016), 2016 WL 344533 *1.

Response: Agree.

9. On January 28, 2016, the Court dismissed Wilson's Fifth Amendment Takings claim, finding he failed to exhaust state law remedies. See Mem. Op. Dkt. # 40, p. 6, (entered January 28, 2016), 2016 WL 344533 *3. The Court further determined that Wilson's allegations of "inadequate notice about what happened to his property and an inadequate procedure to recover it" were "separate from the takings claim that seeks "just compensation" for the city having deprived Wilson of his property." See Mem. Op. Dkt. #40, p. 8, (entered January 28, 2016), 2016 WL 344533 *4.

Response: Agree.

10. On August 31, 2016, Plaintiffs filed a Second Amended Complaint, which is Plaintiffs' current complaint, and removed paragraph 32 previously alleged in Wilson's Amended Complaint. Plaintiffs' Second Amended Complaint does not contain the terms "Fifth

Amendment," "public use" or the phrase "deprived of property without just compensation." (Ex. 3, 2d. Am. Compl., Dkt. # 56).

Response: Agree.

11. On March 9, 2020, the Court granted Plaintiffs' motion to reconsider, and vacated the portion of its ruling on the City's motion to dismiss that pertains to Plaintiff's Fifth Amendment claim. See Mem. Op. Dkt. # 140 (entered March 9, 2020).

Response: Agree.

12. [a] Plaintiffs never sought leave to file a third amended complaint. [b] Plaintiffs' Second Amended Complaint does not allege a Fifth Amendment takings claim. [c] This Court has never certified a Fifth Amendment class.

Response: [a] Agree.

[b] Objection: a complaint need not allege legal theories. *Koger v. Dart*, 950 F.3d 971 (7th Cir. 2020).

[c] Objection: class members with Fifth Amendment Takings Claim are included within "Class 1."

13. Wilson's personal property identified on the Prisoner Property Receipt attached as Exhibit 5 was destroyed by the EPD on April 30, 2014. (Ex. 4, Wasowicz Dep., p. 37, lines 7- 11).

Response: Agree.

14. Wilson's property was not used by the public for a public purpose because it was destroyed.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph. Without waiving this objection, plaintiffs controvert this contention in the Statement of Additional Facts, ¶¶ 1-2.

15. Certain personal property owned by Sanders identified on the Prisoner Property Receipt attached as Exhibit 6 was destroyed by the EPD on or about April 8, 2014. (Ex. 4, Wasowicz Dep., p. 37, lines 7-11).

Response: Agree.

16. Sanders' property was not used by the public for a public purpose because it was destroyed.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph. Without waiving this objection, plaintiffs controvert this contention in the Statement of Additional Facts, ¶¶ 1-2.

17. Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts does not identify any record evidence demonstrating a public purpose for the City's destruction of Plaintiffs' personal property. (Dkt. #152.)

Response: Agree.

18. The Prisoner Property Receipt that described the City's policy and procedure by which detainees could recover their property provided constitutionally adequate notice. See Mem. Op. Dkt. # 40, p. 10 (entered January 28, 2016) 2016 WL 344533 *4.

Response: Agree.

19. Plaintiffs' claims based upon inadequate notice have been dismissed. See Mem. Op. Dkt. # 40, p. 10 (entered January 28, 2016) 2016 WL 344533 *4.

Response: Agree.

20. "Insofar as Plaintiffs seek to certify a class based on challenging the notice provided in the Prisoner Property Receipt, such an attempt would be precluded by the Court's prior order granting Defendant's motion to dismiss in part." See Mem. Op. Dkt. # 75, p. 5, Ft. Nt. 3, (entered August 30, 2017). Wilson, 2016 WL 344533, at *4.

Response: Agree.

21. The salient issue for Plaintiffs' procedural due process claim is "whether the notice requiring an in-custody arrestee to find a designee to retrieve his (or her) property provides a constitutionally adequate procedure ... or whether the City must instead hold arrestees' property until their release." See Mem. Op. Dkt. #75, p. 26, (entered August 30, 2017), Wilson, 2016 WL 344533, at *4.

Response: Agree.

22. The Prisoner Property Receipts attached as Exhibits 5 and 6 allow an arrestee to designate a representative to retrieve his property and it is this procedure for which Plaintiffs contends is constitutionally inadequate and that the City must instead hold arrestee's property until their release. See Mem. Op. Dkt. #75, p. 26, (entered August 30, 2017), Wilson, 2016 WL 344533, at *4.

Response: Agree.

23. Plaintiffs' argue that Section 9-7-3 of Chapter 7 of Evanston's Code of Ordinances entitled Lost, Stolen Property requires the Evanston Police Department (EPD) to store property for sixty days after the final disposition of court proceedings in connection with which the property was taken and creates a constitutionally protected property interest. Plaintiffs contend that EPD's property disposal policy as stated in its Prisoner Property Receipt violates this alleged protected interest. See Mem. Op. Dkt. #75, p. 5, (entered August 30, 2017), Wilson, 2016 WL 344533, at *5.

Response: Agree.

24. The Prisoner Property Receipts attached as Exhibits 5 and 6 contain the arrestee property disposal policy in which Plaintiffs contend violates their protected property interest allegedly guaranteed by Chapter 7 of Evanston's Code of Ordinances entitled Lost, Stolen Property. See Mem. Op. Dkt. #75, p. 26, (entered August 30, 2017), *Wilson*, 2016 WL 344533, at *4.

Response: Disagree. This contention is not supported by the cited page of the Court's memorandum opinion of August 30, 2017.

25. At the time of Wilson's arrest on July 13, 2013, he was given the Prisoner Property Receipt attached as Exhibit 5 documenting various items of personal property he transferred to the possession of the EPD. (Ex. 7, *Wilson Dep.*, pp. 32-33, lines 15-24; 1-12) Wilson signed the Prisoner Property Receipt attached as Exhibit 5. *Id.*

Response: Agree.

26. At the time of Sander's arrest on July 25, 2013, he was given the Prisoner Property Receipt attached as Exhibit 6 documenting various items of personal property he transferred to the possession of the EPD. (Ex. 8, *Sanders Dep.* pp. 29-30, lines 11-24; 1-5.) Sanders signed the Prisoner Property Receipt attached as Exhibit 6 (Exhibit 8, *Sanders Dep.* pp. 29-30, lines 11-24; 1-13).

Response: Agree.

27. Plaintiffs were transferred to the custody of the Cook County Department of Corrections ("CCDOC") after their arrest by EPD, and each received a Prisoner Property Receipt documenting various items of property that EPD retained. Ex. 7, *Wilson Dep.*, pp. 32-33, lines 15-24; 1-12; Ex. 8, *Sanders Dep.* pp. 29-30, lines 11-24; 1-5.

Response: Agree.

28. Plaintiffs transferred custody of their property identified in the Prisoner Property Receipts attached as Exhibits 5 and 6 pursuant to the terms of the Prisoner Property Receipts. (Ex. 7, *Wilson Dep.* p. 53, lines 17-24; 1-7; Ex. 8, *Sanders Dep.* pp. 50-51, lines 16-24; 1-8.)

Response: Disagree. The deposition testimony does not support the assertion that "[p]laintiffs transferred custody of their property."

29. The Prisoner Property Receipts attached as Exhibits 5 and 6 contain the following notice:

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 by statute. THIS IS THE ONLY NOTICE YOU WILL RECEIVE ABOUT YOUR PROPERTY. These items may be retrieved during the normal operating hours of the Property Bureau as posted on the EPD website. We strongly suggest that you call first to schedule an appointment (847-866-5029).

Response: Agree.

30. The Prisoner Property Receipts attached as Exhibits 5 and 6 provide a space in which the arrestee can write in the actual deadline by which their property must be retrieved; another space in which they can designate a third party to retrieve the arrestee's property; and another space for the arrestee to sign and date the form acknowledging that they understand the procedure.

Response: Agree.

31. The Prisoner Property Receipts attached as Exhibits 5 and 6 refers arrestees to the EPD website.

Response: Disagree. The reference on the form to the EPD website is to obtain "the normal operating hours of the Property Bureau." (ECF Nos. 160-6, 160-7.

32. The Prisoner Property Receipts attached as Exhibits 5 and 6 provide a phone number to the Property Bureau arrestees can call regarding their property.

Response: Disagree. The form provides a telephone number to schedule an appointment to pick up property.

33. The City of Evanston posts information about arrestee property on its website, www.cityofevanston.org contained in Exhibits 9, 10 and 11.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph.

34. [a] Plaintiffs had access to the internet while in custody at the CCDOC. [b] Whether Plaintiffs had access to the internet while in custody at the CCDOC is arguably a moot point, as this court's prior rulings have precluded Plaintiffs' insufficient notice argument (Ex. 1, p. 9, footnote 1).

Response: [a] Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph.

[b] Objection: This contention is not material to this case.

35. The information posted on the City of Evanston's website contained within Exhibits 9 to 11 identify the difference between Lost/Recovered Property and Arrestee Property, in pertinent part, as follows:

Lost/Recovered Property

When lost property is recovered and turned into the police department, every reasonable attempt will be made to identify and return the property to its rightful owner. In many instances property is recovered but never reunited with its owner because there was never a report filed. If you have an item that you have lost or had stolen in Evanston, your first action should be to file a police report.

New! You can now check our list of recently recovered property online. Our listing features items lost, abandoned or mislaid property that have been turned in to, or recovered by, our department. ***

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.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph.

36. The information posted on the City of Evanston's website contained within Exhibits 9 to 11 identify the different disposal policies for various types of property as follows:

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.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the

facts set forth in this paragraph.

37. Plaintiffs were arrestees who were notified regarding the terms in which their property would be inventoried via the Prisoner Property Receipt prior to their transfer to CCDOC and had 30 days to make arrangements to retrieve their property. (Ex. 5 and 6; Wilson Dep. pp. 32-33, lines 11-24; 1-12; Sanders Dep. pp. 50-51, lines 16-24; 1-8)

Response: Objection. This contention is not supported by the cited exhibits or by the cited deposition testimony.

38. The Property Disposal section referenced in Exhibits 9 to 11 provide that property owners may make a written request for an extension of the holding period.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph.

39. Plaintiffs never sent a written request to the EPD requesting an extension of the 30-day holding period.

Response: Agree.

40. Michael Wasowicz, oversaw the Property Bureau, and testified regarding the department's procedures for accommodating arrestees in the release and return of their property. (Ex. 4, Wasowicz Dep., p. 3, lines 10-22.

Response: Agree.

41. Wasowicz was involved in changing the Prisoner Property Receipt form to the version that was utilized at the time of Plaintiffs' arrests as reflected in Exhibits 5 and 6. (Ex. 4, Wasowicz Dep., pp.12-13, lines 22-24;1-24.

Response: Agree.

42. Wasowicz recalled from working at the Skokie Police Department that it had a procedure which allowed an arrestee to designate a representative to retrieve their property in their absence at the time of their arrest. Wasowicz decided to revise the procedure contained in the EPD's Prisoner Property Receipt form to provide an arrestee with the ability to designate a representative to retrieve their property to make it easier to facilitate the return of arrestee property rather than some of the previous requirements he believed could be burdensome. (Ex. 4, Wasowicz Dep., pp. 14-15, lines 22-24; 1-12).

Response: Agree.

43. Wasowicz also changed the time period for arrestees to reclaim their property from 90 days to 30 days to call attention to the fact that an individual needed to take action sooner rather than

later to reclaim their property. (Ex. 4, Wasowicz Dep., p. 19, lines 16-21).

Response: Agree.

44. The EPD allows any designee identified by the arrestee to pick up the arrestee's property at the police station. (Ex.4, Wasowicz Dep., p. 26, lines 2-11).

Response: Agree.

45. The arrestee can initiate a phone call from the CCDOC to the property office, speak with a property officer, and designate someone to pick up their property. (Ex. 4, Wasowicz Dep. at 26:12-24).

Response: Objection. Defendants does not provide any foundation for Wasowicz's knowledge about whether and how detainees at the Cook County may initiate a phone call.

46. Arrestees can write a letter to the EPD while detained at the CCDOC requesting that their property be released to a designated individual because they are unable to personally retrieve their property. (Ex. 4, Wasowicz Dep., p. 27, lines 2-5).

Response: Agree.

47. Arrestees can make a request through their attorney to have their property returned. (Ex. 4, Wasowicz Dep., p. 27, lines 17-20).

Response: Agree.

48. Arrestees' attorneys can make a request to have the arrestee's property held, or obtain a court order for return of the property. Arrestees' attorneys can also e-mail requests to make arrangements for return of property. *Id.*

Response: Agree.

49. The EPD has approximately 40 arrestees per month, which would translate into 480 items per year. (Ex. 4, Wasowicz Dep., p. 45, lines 16-24).

Response: Agree.

50. The EPD destroyed or otherwise disposed of property retained on behalf of thirty- nine arrestees, who, according to the custody information Plaintiffs submitted, were in CCDOC custody for more than thirty-days. (See Mem. Order Re Mot. Class Cert., Dkt. # 75-5, ¶3-4, 35-36, 39-40, 47-48, 51-52, 55-56, 59-60, 63-64, 67-68, 79-80, 83-84, 99-100, 107-108, 111-12, 115-16, 119-20, 123-24, 143-44, 147-48, 159-60, 167-68, 175-76, 203-04, 211-12, 223-24, 251-52, 259-60, 263-64, 279-80, 291-92, 295-96, 299-300, 307-08, 315-16, 319-20, 323-24, 327-28;

Response: Agree.

51. Most arrestee property is retrieved. (Ex. 4, Wasowicz Dep., p. 46, lines 5-10).

Response: Disputed. ECF No. 152-16, Wasowicz Dep. 46:7-17:

Question: What's the number of items that are unclaimed each year?

Wasowicz: I don't know the specific number of items that are unclaimed. More items are picked up. I don't know. I can't give you a specific number at this point as to what's unclaimed.

Q: Is it more than ten a month that are unclaimed?

Defense Counsel: Objection, calls for speculation. If you know.

Wasowicz: I've never looked at the numbers for unclaimed either on a monthly basis or an annual basis so I don't have a number.

52. Chapter 7 of Evanston's Code of Ordinances is entitled "Lost, Stolen Property Ordinance" and is attached as Exhibit 12.

Response: Agree.

53. Plaintiffs' substantive due process claim is based upon an alleged property interest in the Lost, Stolen Property Ordinance attached as Exhibit 12. Plaintiffs contend the Prisoner Property Receipts attached as Exhibits 5 and 6 violate their alleged protected property interest derived from the Lost, Stolen Property Ordinance attached as Exhibit 12. (Ex. 3, ¶ 5-10).

Response: Objection. Defendant's attempt to summarize plaintiffs' theory of the case does not include specific references to the affidavits, parts of the record, and other supporting materials.

54. Wilson's property identified on the Prisoner Property Receipt attached as Exhibit 5 was not lost. (Ex. 7, Wilson Dep., p. 31, lines 2-22).

Response: Agree.

55. Wilson knew the EPD took possession of his personal property identified on the Prisoner Property Receipt attached as Exhibit 5 at the time of his arrest on July 10, 2013. (Ex. 7, Wilson Dep., p. 31, lines 2-22), because he had previously retrieved personal property from EPD in a prior arrest (Ex. 7, Wilson Dep. p. 85, lines 6-10). The Prisoner Property Receipt attached as Exhibit 5 demonstrates that Wilson transferred possession of the identified personal property to the EPD.

Response: Agree.

56. Wilson owned the personal property identified on the Prisoner Property Receipt attached as Exhibit 5 in which the EPD took possession of said personal property at the time of his arrest on July 10, 2013. (Ex. 7, Wilson Dep. p. 31, lines 2-22).

Response: Agree.

57. Wilson's property identified on the Prisoner Property Receipt attached as Exhibit 5 was not stolen. (Ex. 7, Wilson Dep., p. 31, lines 2-22).

Response: Agree.

58. Sanders knew the EPD took possession of personal property identified on the Prisoner Property Receipt attached as Exhibit 6 at the time of his arrest on July 25, 2013. (Ex. 8, Sanders Dep. p. 67, lines 6-20).

Response: Agree.

59. The Prisoner Property Receipt attached as Exhibit 6 demonstrates that Sanders transferred possession of the identified personal property to the EPD.

Response: Objection. Defendant does not include specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in this paragraph. Without waiving this objection, Sanders denied that the signature at the bottom of Defendant's Exhibit 6 was his signature. (ECF No. 160-9 at 9, Sanders Dep. 30:6-16.)

60. Sanders' property identified on the Prisoner Property Receipt attached as Exhibit 6 was not lost. (Ex. 8, Sanders Dep. pp. 32-33, lines 13-24; 1-4)

Response: Agree.

61. Sanders owned the personal property identified on the Prisoner Property Receipt attached as Exhibit 6 in which the EPD took possession of at the time of his arrest on July 25, 2013. *Id.*

Response: Agree.

62. Sanders' property identified on the Prisoner Property Receipt attached as Exhibit 6 was not stolen. *Id.*

Response: Agree.

63. Wilson was not aware of Chapter 7 of the City Code of Ordinance at the time of his arrest on July 10, 2013. (Ex. 7, Wilson pp. 76-77)

Response: Agree.

64. Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts does not identify any evidence in the record that Sanders was aware of Chapter 7 of the City Code of Ordinance at the time of his arrest on July 25, 2013.

Response: Agree.

65. Wilson was arrested by the EPD on July 10, 2013. (Ex. 7, Wilson Dep. p. 24, lines 17-20).

Response: Agree.

66. Wilson was transferred to the custody of the Sheriff of Cook County on July 11, 2013. (Ex. 13, Pltf. Resp. RTA, ¶ 2).

Response: Agree.

67. Wilson appeared for a bond hearing and was represented by an attorney. Wilson did not have his bond hearing attorney contact the EPD to obtain the return of his personal property. *Id.* at ¶3, 4, 5.

Response: Agree.

68. From August 7, 2013 through August 5, 2014, Wilson was represented by an attorney. *Id.* at ¶7.

Response: Agree.

69. Wilson had access to a telephone while in the custody of the CCDOC. *Id.* at ¶9.

Response: Agree.

70. Wilson had access to Correctional Rehabilitation Workers from the CCDOC to connect him with his criminal defense attorney. *Id.* at ¶14.

Response: Agree.

71. Wilson had access to the Correctional Rehabilitation Workers from the CCDOC to make telephone calls on his behalf, including assisting him in retrieving the subject inventoried personal property from the EPD, but he did not work with any social workers in an effort to retrieve his personal property *Id.* at ¶15-17.

Response: Agree.

72. In February of 2014, Wilson sent a FOIA request to the EPD requesting a copy of his property slip because the original slip in his possession had "got ruined" and wanted a replacement. This is the only action he took to retrieve his property while in the custody of the CCDOC. (Ex. 7, Wilson Dep. pp. 58-61, 71-72).

Response: Agree.

73. Wilson made efforts to inquire about his personal property in February 2014 and did not abandon his personal property identified on the Prisoner Property Receipt form attached as Exhibit 5. (Ex. 7, Wilson Dep. pp. 58-61, 71-72).

Response: Agree.

74. Plaintiffs' Local Rule 56(a)(3) Statement of Undisputed Facts does not cite to any record evidence to demonstrate the City believed Wilson abandoned his personal property identified on the Prisoner Property Receipt attached as Exhibit 5. (Dkt.# 152).

Response: Agree.

75. Plaintiff Dameon Sanders was arrested on July 25, 2013. (Ex. 8, Sanders Dep. p. 28, lines 19-22). He was transferred to Cook County Jail and remained there while his criminal case was pending. (Ex. 8, Sanders Dep. pp. 62-63, lines 24-11).

Response: Agree.

76. Sanders wrote in the date that he must retrieve his belongings by as 8-25-13 on the Prisoner Property Receipt attached as Exhibit 6. He also wrote in the name "Jessica Mosley" as an individual he authorized to retrieve his belongings for him. Mosley was his girlfriend at the time. (Ex. 8, Sanders' Dep. p. 30, lines 17-19.)

Response: Agree.

77. Jessica Mosely failed to retrieve Sanders' personal property for him before some of it was destroyed. (Ex. 14, Sanders' Resp. Defts. RTA, ¶3.)

Response: Agree.

78. While in CCDOC custody, Sanders contacted William Lee to retrieve his property, but Lee was unable to secure Sanders' property when Lee went to the EPD because Lee did not have a signed authorization form Sanders in order to authorize the EPD to release Sanders' property to Lee. *Id.* at ¶ 5.

Response: Agree.

79. Sanders had social workers at the CCDOC arrange telephone calls for him. (Ex. 8, Sanders Dep., p. 64, lines 16-20).

Response: Agree.

80. While in CCDOC custody, Sanders called the EPD to discuss the release of his property to Lee and they told him Lee needed to have a signed authorization. (Ex. 8, Sanders Dep., p. 58: 12-19).

Response: Agree.

81. At all times during the subject criminal case, Sanders was represented by an attorney. *Id.* at ¶ 12.

Response: Objection. Local Rule 56.1(a) states that "a movant shall not file more than 80 separately-numbered statements of undisputed material fact."

82. At no time did Sanders ask his criminal defense attorney to contact the EPD to obtain the return of his personal property. *Id.* at ¶ 13.

Response: Objection. Local Rule 56.1(a) states that "a movant shall not file more than 80 separately-numbered statements of undisputed material fact."

83. Some of Sanders' property was returned to him, including \$162 plus four bills, in U.S. Currency, a state ID card and two shoe-laces. (Ex.4, Wasowicz Dep., p. 28, lines 6-16).

Response: Objection. Local Rule 56.1(a) states that "a movant shall not file more

than 80 separately-numbered statements of undisputed material fact.”

84. Sanders’ two cell phones are still in the custody of the EPD. (Ex. 4, Wasowicz Dep., p. 38, lines 2-6.)

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

85. Sanders’ belt, three CTA cards, a debit card and a Link card were destroyed by the City on or about April 8, 2014. (Ex. 4, Wasowicz Dep., p. 37, lines 7-11).

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

86. Sanders did not abandon his personal property identified on the Prisoner Property Receipt form attached as Exhibit 6 and made efforts to retrieve his personal property after his arrest on July 25, 2013. (Ex. 8, Sanders Dep. p. 35, lines 1-22).

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

87. Plaintiffs’ Local Rule 56(a)(3) Statement of Undisputed Facts does not cite to any record evidence to demonstrate the City believed Wilson abandoned his personal property identified on the Prisoner Property Receipt attached as Exhibit 5. (Dkt.# 152.)

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

88. Prior to July 25, 2013, Sanders had been arrested on a number of occasions by the EPD. (Ex. 15, Sanders’ Answers to Interrogatories, ¶7).

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

89. His mother Lisa Sanders retrieved his personal property for him when he was arrested by the EPD on July 31, 2010 and May 7, 2011. (Ex. 14, Sanders’ Responses to RTA, ¶ 49-51).

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

90. Sanders’ brother, Terrance Mark Sanders, retrieved his personal property for him when he was arrested by the EPD on July 21, 2014. (Ex. 14, Sanders’ Responses to RTA, ¶ 58).

Response: Objection. Local Rule 56.1(a) states that “a movant shall not file more than 80 separately-numbered statements of undisputed material fact.”

91. Sanders' father, Robert Sanders, retrieved Dameon's personal property from him when he was arrested by the EPD on November 22, 2015. *Id.* at 63.

Response: Objection. Local Rule 56.1(a) states that "a movant shall not file more than 80 separately-numbered statements of undisputed material fact."

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