

**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.)

**DEFENDANT CITY OF EVANSTON'S REPLY IN SUPPORT OF ITS 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 submits the following reply brief in support of its Motion to strike certain exhibits attached to Plaintiffs’ Local Rule 56 (a)(3) Statement of Undisputed Facts in support of their Motion for Summary Judgment:

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 are irrelevant, lack foundation or are improper hearsay. In their response, Plaintiffs argue that emails, police department reports, letter from defense counsel, and the contract with propertyroom.com could be admissible as business records (Dkt. #166, pp. 2-4). Plaintiffs’ argument fails because all of these exhibits are irrelevant and lack the proper foundation necessary to be admissible in any form at trial.

First, Plaintiffs’ response does not address the City’s argument that these documents should be stricken because they are not relevant to any issues in Plaintiffs’ Second Amended Complaint.

The General Orders of the City of Evanston are not relevant because 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). Additionally, no witness with personal knowledge regarding these General Orders has been identified to be called to testify at trial or give deposition testimony and discovery is now closed. Secondly, Plaintiffs' provide no explanation as to the relevance of the supplemental police report, emails, or letter from the defense attorney. Lastly, the City's contract with propertyroom is also irrelevant to the issues in this case. Plaintiffs refer to the contract with propertyroom.com to support their purported takings claim. As the City has explained, no takings claim is at issue in this case. Even if a takings claim were at issue, Plaintiffs' cite to no evidence or testimony in the record showing that their property was sold by the City for some benefit. To the contrary, Plaintiffs concede their property was destroyed. Furthermore, no witness with personal knowledge of the contract has been called to testify to the terms of the contract. The contract itself is inadmissible.

Second, Plaintiffs' argument that these exhibits could be admissible at trial as business records also fails because Plaintiffs have not disclosed any individuals with personal knowledge of these documents, requested their depositions, or otherwise requested their trial testimony, and discovery has now closed. While it is true that it is not necessary that the witness testifying need not be the signatory of the business records, the witness testifying must have personal knowledge regarding the business record. *U.S. v. Reese*, 666 F. 3d 1007, 1017 (7th Cir. 2012)(noting a person need not be the author of the document but must have personal knowledge of the procedure used to create and maintain the document). Plaintiffs fail to explain what witnesses have personal knowledge regarding these exhibits. Therefore, without the necessary testimony from witnesses to

establish foundation, these exhibits could not be presented in a form that would be admissible in evidence

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant, City of Evanston's Reply in Support of Its Motion to Strike Certain Exhibits Attached 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 20th day of January, 2021, with proper postage prepaid.

s/ William B. Oberts
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