IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ELAINE BLANCHARD, KEEDRAN FRANKLIN, PAUL GARNER and BRADLEY WATKINS, (Dismissed per Court Order) Plaintiffs,	)	
and	)	
ACLU OF TENNESSEE, Inc. Intervening Plaintiff,	)	
v.	)	No. 2:17-cv-02120-jpm-DKV
THE CITY OF MEMPHIS, Defendant.	)	

PLAINTIFF'S REPLY IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Plaintiff ACLU of Tennessee ("ACLU-TN" or "Plaintiff"), submits this reply in support of its *Motion for Summary Judgment*.[1]

As an initial matter, Plaintiff objects to Exhibits B ("Report") and C ("Charlottesville Report") to its *Response to Plaintiff's Motion for Summary Judgment*. The Exhibits are inadmissible hearsay and not admissible under the learned treatises exception. *Fisher v. United States*, 78 Fed. Cl. 710, 713 (2007).

Defendant's violations of the Consent Decree entered in *Kendrick v. Chandler*, Civil Action No. C76-449 (the "Decree") are numerous. These violations, when viewed together as a

[1] Plaintiff incorporates and references its Response to Defendant's Motion for Summary Judgment on the Issue of Contempt as well as its response to Defendant's Statement of Undisputed Material Facts. (Doc. Nos. 88, 88-1.)

whole, reveal a system designed to do exactly what the Decree was established to prevent — to gather, index, file, maintain, store, and disseminate information related to "beliefs, opinions, associations or other exercise of First Amendment rights."

The evidence clearly and convincingly demonstrates that Defendant has violated the Decree through its intentional and systematic conduct.

I. AN OVERVIEW OF THE DECREE AND DEFENDANT'S SYSTEMATIC VIOLATIONS

The purpose of the parties in entering a consent decree is evidenced by the language of their agreement. *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). Such is true of the Consent Decree entered between the parties in this case.

Principally, the Decree evidences an agreement to prioritize and protect the rights of people to communicate an idea or belief, to speak and dissent freely, to write and to publish, and to associate privately and publicly for any lawful purpose. To this end: The parties agreed to stop the investigation and gathering of information about people's beliefs, opinions, and associations; to stop the indexing, filing, maintenance, and storage of that information; and to stop the trafficking of that information where not related to a lawful criminal investigation. The Decree provided protections beyond that which is provided by the Constitution alone.[2]

The Decree evidences, as well, the interest of law enforcement in conducting lawful criminal investigations and in protecting the public. Nothing within the four corners of the Decree prevents MPD from sending officers to free speech events for crowd control. The Decree does not prevent MPD from being aware through social media, newspapers, or personal interactions that large events are being planned, and it does not prevent MPD from using that information to plan

[2] Parties may agree "to do more than that which is minimally required by the Constitution to settle a case and avoid further litigation." *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 392 (1992).

for gatherings of large groups of people whether or not those individuals have secured a permit. Such information gathering does not implicate the Decree because it does not serve to identify individuals according to their beliefs, to catalog those beliefs, to investigate associations between individuals, or to otherwise chill the constitutional rights of the participants.

Further, nothing in the Decree prevents MPD from arresting individuals who break the law while at free speech events. The Decree does not prohibit MPD from dispersing crowds where the Constitution and Tennessee law provide. The Decree does not prohibit criminal investigations that arise out of violations of the law that occur at free speech events. This does not, however, provide MPD or its officers with the discretion to unilaterally declare conduct "unlawful." MPD's conduct, like that of all individuals, is bounded by the law's requirements. As seems obvious, whether conduct is lawful or unlawful must be determined in reference to the law itself.[3]

The parties, in negotiating the Decree, acknowledged that there would be instances where the interest of MPD in investigating criminal activity would come into tension with the exercise of First Amendment rights by individuals and groups. The Decree resolves this tension by specifically establishing a protocol for situations in which a person's beliefs or associations might be impacted by law enforcement's need to conduct a lawful criminal investigation. Where there is a lawful criminal investigation of criminal conduct that may result in the collection of information about the exercise of First Amendment rights or interfere with their exercise, the protocol establishes a burden that must be met by MPD to ensure that such investigations are no more broad and intrusive than necessary. The protocol's requirements for approval, critical review, and fact finding protect the interests of MPD by allowing legitimate and necessary criminal investigations

[3] As discussed below in greater detail, gatherings without the benefit of a permit are not per se "unlawful" within the meaning of the Decree.

while protecting the rights of persons to exercise their First Amendment rights. By participating in the negotiation of the Decree and agreeing to this protocol, Defendant indicated that it could reasonably accomplish the Decree's requirements.[4]

The undisputed, material facts submitted at summary judgment demonstrate that Defendant did not just violate the Decree, Defendant disregarded it entirely. Defendant created a system for gathering information about beliefs, opinions, and associations related to the exercise of First Amendment rights through a specialized unit dedicated to that purpose. That specialized unit gathered information, indexed and analyzed it, and used it to engage in further investigations of those exercising First Amendment rights.

The unit cultivated informants, posed as members of free speech groups and events, and used covert and undercover means to collect names, photographs, and statements of individuals at free speech events. The unit then systematically shared that information within MPD, to outside law enforcement agencies throughout the region, and to community members. The information shared was personal in nature and pertained to ongoing and completed investigations, some of which were related to allegations of criminal activity and some of which were not. If these activities were not violation enough, the unit then used the information gathered to construct a list of individuals who were not allowed to enter City Hall without an escort; individuals were placed on the list based purely on their associations, their beliefs, the opinions they had expressed, and the events they had attended. All of the unit's activity was conducted without appropriate oversight, without an analysis of whether the methods were overbroad or intruded upon First

[4] *United States v. State of Tenn.*, 925 F. Supp. 1292, 1302–04 (W.D. Tenn. 1995) (citing *Glover v. Johnson*, 934 F.2d 703, 708-09 (6th Cir. 1991) (finding state prison officials in contempt for failing to abide by order consisting of negotiated settlement between the parties); *Spallone v. United States*, 493 U.S. 265, 276 (1990) (upholding finding of contempt against city that had failed to take action required by consent decree)).

Amendment rights, and without consideration of whether the requirements of the Decree were met.

Each individual incident or activity violated the Decree, but more than that, each individual incident was part of a system of violations that resulted in the magnification of harm.

II. ILLUSTRATING DEFENDANT'S VIOLATIONS OF THE DECREE

The overwhelming evidence, consisting of the testimony of MPD officers and internal MPD communications, substantiates the existence of a system dedicated to the collection and dissemination of political intelligence.

OHS operated within MPD as a unit dedicated to the investigation and tracking of "local individuals and groups that were staging protests." (Chandler Dep. 14-15.) OHS enlisted the Real Time Crime Center to electronically track groups, individuals, and events, to report back to OHS and command staff, and to place cameras and to review live camera feeds during free speech events. (Bass Dep. 58-59; Patty Dep. 6-26, 34; Wilburn Dep. 25, 40-41; *see also* Exs. E, S, T, U, DD, FF.) Operation of this type of unit is prohibited by the Decree.

OHS then shared the information it collected regarding individuals and events to precinct commanders. MPD precinct commanders, in turn, surveilled the events and reported back to OHS. (Chandler Dep. 47-48; Bass Dep. 46-47; Exs. SS, GG, DD, JJ, KK.) MPD surveilled large public events, events on private property, and closed meetings; reports included the identities of the participants and the content of the speech. (*See, e.g.* Exs. KK, SS.) MPD sent undercover officers to closed meetings and events on private property to gather intel and to "sit down and listen" to try to find out "the intentions" of those in attendance. (Bass Dep. 52; Ex. HH.) OHS investigated individuals and groups by posing as a member of groups and organizations through undercover social media accounts and cell phones. (Exs. LL, MM, Z.) OHS created and maintained a database of protests, demonstrations, and flash mobs to track the "pattern" of who was attending free speech

events. (Ex. P; Reynolds Dep. 30-31.) Collection of political intelligence is prohibited by the Decree.

OHS disseminated political intelligence through Joint Intelligence Briefings ("JIBs") that were distributed several times daily (Exs. G, H, I, J, K, L, M, N.); through Power Point presentations regarding activists and protest groups (Exs. Q, R.); and through dossiers distributed on the individuals placed on the City Hall blacklist (Ex. C). The JIBs distributed political intelligence such as: pictures, links to social media, and names of individuals who were purportedly planning events (Ex. G, M); times and places of the private meetings of certain groups (Ex. G); screen shots of speech made online (Ex. H); information about past gatherings with photographs and identifications (Ex. N). Throughout the time period for which Defendant provided documents, the JIBs continued to contain political intelligence and continued to maintain wide distribution. (*See, e.g.*, Ex. L.) The Power Points distributed political intelligence such as: identification of protest leaders, information regarding arrests that did not result in convictions, associations of individuals with each other and issues, belief systems of organizations, personal information, and social media posts obtained through undercover social media accounts. (Exs. Q, R.) Dissemination of political intelligence, even where related to criminal investigations, is prohibited by the Decree.

OHS collected, indexed, and maintained a list of "Key Personnel" present at protest events.[5] (Ex. P.) MPD applied data-driven software to map associations between people, groups, and events.[6] (Ex. PP.) OHS took the information gathered through all of these various sources and

[5] Reynolds testified that he included the "Key Personnel" category to track the individuals who were regularly attending events. (Reynolds Dep. 30-31.)

[6] Defendant states in its Response that there is no evidence that MPD used this software other than the one instance cited. Plaintiff was deprived of the opportunity to ask about this document at deposition because it was withheld under a claim of privilege until after depositions were complete.

used it to place individuals on the City Hall Blacklist. (Reynolds Dep. 122, 135-26; Rallings Dep. 67-68.)

The system described above lacked the supervision established in the Decree, resulting in pervasive abuses of the very type the Decree was designed to prevent.[7]

III. "FOR THE PURPOSE OF" IS AN OBJECTIVE INQUIRY

Defendant contends that the Decree requires a subjective inquiry into the motives of the officers involved to determine whether conduct was undertaken "for the purpose of" engaging in political intelligence. (Doc. No. 93.) Respectfully, determination of "purpose" should be objective rather than subjective inquiry.

Subjective assessment in determining an individual's "purpose" is "notoriously difficult to prove." *See Kungys v. United States*, 485 U.S. 759, 798–99 (1988). Accordingly, an objective inquiry into "purpose" is favored.[8] *Michigan v. Bryant*, 562 U.S. 344, 359–60 (2011). In an objective analysis, "[t]he relevant inquiry is not the subjective or actual purpose of the individuals

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Defendant has not taken the opportunity to define and explain its use of the i2 Analysis Notebook in response to Plaintiff's Motion. In any respect, even one use of the i2 Analysis Notebook to map the associations between individuals and their attendance of free speech events is a violation of the Decree.

[7] Rallings testified that he does not recall conducting reviews or authorizations for criminal investigations as specified in the Decree. (Rallings Dep. 92-93.) If Rallings did conduct such reviews, he does not recall them and they were not contained in the documents produced by Defendant in response to discovery requests. This is sufficient to establish that such reviews were not conducted.

[8] *See, e.g.*, *Michigan*, 562 U.S. at 359–60 (applying objective analysis to officer's "primary purpose" in conducting interrogation); *Kungys*, 485 U.S. at 798–99 (adopting objective analysis regarding whether a false statement has been made "for the purpose of obtaining a benefit under the immigration and naturalization laws"); *Whren v. United States*, 517 U.S. 806, 813 (1996) (refusing to evaluate Fourth Amendment reasonableness subjectively in light of the officers' actual motivations); *New York v. Quarles*, 467 U.S. 649, 655–656, and n. 6 (1984) (holding that an officer's subjective motivation is irrelevant to determining the applicability of the public safety exception); *Rhode Island v. Innis*, 446 U.S. 291, 301–302 (1980) (holding that a police officer's subjective intent to obtain incriminatory statements is not relevant to determining whether an interrogation has occurred).

involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." *Michigan*, 562 U.S. at 359–60.

Likewise, the Court should adopt an objective analysis here. The determination of whether MPD has acted "for the purpose" of engaging in political intelligence must be based upon, not the subjective or actual purpose of the individuals involved, but rather the purpose that can be ascertained objectively from the statements and actions of MPD and its individual officers.

IV. "LAWFUL PURPOSE" MUST BE DETERMINED BASED ON THE LAW

A determination of whether conduct is lawful under the Decree must be anchored in the law itself. Conduct does not become unlawful simply by labeling it so. *See e.g.*, *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 150–51 (1969).

Defendant's assessment that various assemblies were "unlawful" is based not on any specific violation of Tennessee criminal law, but rather is based on whether an event was permitted or unpermitted. Accordingly, where MPD officers state in the record that an event was "unlawful," they are not saying that the event was deemed a threat to public safety and disbursed, that violence occurred at the gathering, or even that individuals were arrested for violating the law at the event; instead, the officers are stating that the event organizers did not go through the process of obtaining a permit.

Defendant has derided events as "unlawful" even where they were not required to have a permit by Ordinance.[9] Public assembly permitting is governed by Memphis Code of Ordinance § 12-52. Pursuant to the Code, public assemblies of more than 25 persons that "interfere with the

[9] *See, e.g.*, Reynolds Dep. 37 (Sgt. Reynolds, an OHS officer, used the term "unlawful assembly" to refer to any assembly of more than 25 people without a permit.).

normal flow or regulation of pedestrian or vehicular traffic or occupies any public area in a place open to the general public, to the hindrance of others" require a permit issued by the permit office. Code § 12-52-2. There are exceptions for spontaneous events and private gatherings on private property that "may inadvertently interfere with the normal flow or regulation of traffic upon the public streets." Code § 12-52-3. Any person who violates chapter 12 of the Code is subject to a fine not to exceed $50.00. Code § 12-52-17. Accordingly, individuals may gather without a permit and be in full compliance with the Ordinance.

Furthermore, a public gathering is not unlawful simply because it is unpermitted — the U.S. Constitution protects the right to assemble without a permit. *See, e.g., Forsyth County, Ga. v. Nat'list Movement*, 505 U.S. 123, 130 (1992); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1039, 1040-43 (9th Cir. 2006); *American-Arab Anti-Discrimination Committee v. City of Dearborn*, 418 F. 3d 600, 608 (6th Cir. 2005) (statute requiring small groups to get permit before walking on a public right of way is overly broad and not narrowly tailored because it would apply to circumstances that "do[ ] not trigger the [city's] interest in safety and traffic control."). The government may impose "time, place, and manner" restrictions on the exercise of First Amendment rights — for example, permit requirements for events that block traffic, impede access to buildings, or amplify sound late at night — but such requirements must be narrowly tailored. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Police may not break up a gathering unless there is a clear and present danger of riot, disorder, interference with traffic, or other immediate threat to public safety. *See Collins v. Jordan*, 110 F.3d 1363, 1371 (9th Cir. 1996) ("enjoining or preventing First Amendment activities before demonstrators have acted illegally or before the demonstration poses a clear and present danger is presumptively a First Amendment violation"); *Jones v. Parmley*, 465 F.3d 46, 56-57 (2d Cir.

2006). And police cannot arrest protestors without individualized probable cause. *See, e.g.*, *Barham v. Ramsey*, 434 F.3d 565, 576 (D.C. Cir. 2006).

Defendant attempts to paint a narrative of lawlessness and violence to serve as a justification for its violations of the Decree and its failure to substantially comply. But the record does not support that narrative. In response to discovery requests, Defendant failed to produce evidence that events were declared a threat to public safety or that the small number of individuals who were arrested during free speech events were ultimately convicted.[10] Nor has Defendant produced any evidence that anyone was even *cited* under the public assemblies ordinance for assembling without a permit or blocking traffic. Even more, the vast majority of Defendant's conduct that violated the Decree was not related to public gatherings at all. Essentially, Defendant argues that because there was a nationwide and local protest movement, because any event *could* involve conduct that violates the law,[11] and because some individuals were *arrested* at past events, that MPD was authorized to investigate individuals, groups, and events without limitation. The Decree was designed to prevent that exact form of overreach.

Where individuals have violated the law beyond the bounds of the Constitution's protections, they are subject to the law's requirements. That is the limit on "lawful conduct" governed by the Decree.

V. CONCLUSION

Plaintiff respectfully requests that the Court grant its Motion for Summary Judgment and enter a finding of contempt against Defendant in this action.

[10] While a small number of individuals were arrested at various free speech events, none of those individuals were ultimately convicted. (Chandler Dep. 75.)

[11] Defendant repeatedly cites to Charlottesville as an example of the threats posed by public events; the Charlottesville tragedy occurred *after* the time period at issue in the present lawsuit and, thus, could not have served as the basis for any of the actions taken herein.

Respectfully submitted,
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IN THE UNITED STATES DISTRICT COURT
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ELAINE BLANCHARD, KEEDRAN FRANKLIN, PAUL GARNER and BRADLEY WATKINS, (Dismissed per Court Order) Plaintiffs,	)	
and	)	
ACLU OF TENNESSEE, Inc. Intervening Plaintiff,	)	
v.	)	No. 2:17-cv-02120-jpm-DKV
THE CITY OF MEMPHIS, Defendant.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF ADDITIONAL MATERIAL FACTS IN SUPPORT OF ITS RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Plaintiff ACLU of Tennessee ("ACLU-TN"), submits this response to *Defendant's Statement of Additional Material Facts in Support of Its Response to Plaintiff's Motion for Summary Judgment*.

1. At no time since the entry of the Consent Decree has the Memphis Police Department ("MPD") engaged in "political intelligence" for the purpose of interfering with any person's or group's First Amendment rights. (Affidavit of former MPD Police Director Larry Godwin, attached as Exhibit 1; Affidavit of former MPD Police Director Toney Armstrong attached as Exhibit 2, Director Michael Rallings Depo. at pp. 107-113 (all Deposition Excerpts of Director Rallings attached as Coll. Exhibit 3); Deposition of Major Lambert Ross at p. 77 (attached as Exhibit 4); Deposition of Major Stephen Chandler at p. 74 (all Deposition Excerpts

of Major Chandler attached as Coll. Exhibit 5); Deposition of Major Eddie Bass at pp. 67-68 (attached as Exhibit 6)).

Response No. 1 Disputed. Substantial evidence is in the records demonstrating that MPD has engaged in "political intelligence." (Exh. A, B C, D, E, F, G, H, I, J, K, L, M, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, SS, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP; Bass Dep. 21, 46-50, 52, 55-56, 58-59; Bonner Dep. 9, 33-35; Chandler Dep. 11-15, 23-24, 28-29, 38, 47-50; Howard Dep. 24-25, 39-40; Patty Dep. 6-26, 34; Rallings Dep. 64-66, 92-93; Reynolds Dep. 17, 25, 30-31, 43, 45, 54-56, 63, 90-99, 104, 108-09, 112-13, 122, 125-26, 128, 186-87; Wilburn Dep 13, 21, 24-26, 27-28, 40-41, 46-47.) All deposition excerpts and exhibits cited herein are attached to Plaintiff's Motion for Summary Judgment. (Doc. No. 79.)

2. The Office of Homeland Security ("OHS") of the MPD also began in 2016 the daily distribution of what is known as the Joint Intelligence Bulletin ("JIB"). After the shutdown of the I-40 Bridge, Major Bass instructed OHS to create a method of collecting and disseminating information related to spontaneous events in an effort to adequately allocate resources and protect public safety. (Depo. Reynolds p. 25 attached as Exhibit 12). The JIB was designed to collect information from federal, state, and local agencies regarding known threats to public safety for dissemination to other law enforcement agencies. (Depo. Chandler, pp. 22-25). Several of the first JIBs are attached as Collective Ex. 7.

Response No. 2 Disputed. JIBs, which OHS circulated between one and three times per day, were reports prepared by OHS that presented national news stories regarding police involved shootings alongside local criminal activities, photographs and profiles of activists and individuals, and lists of movement meetings and events. Chandler described the four categories of information that were to be incorporated into the brief as: (1) Police Shootings/deaths; (2) Riots/protests; (3) Black Lives Matter (BLM); (4) Officer Safety. (Ex. E.). Chandler testified

that, OHS shifted its mission to focus on "local individuals or groups that were staging protests." (Chandler Dep. 14-15.) Chandler testified that the groups targeted by the JIB were "any of the organizations that arose out of Ferguson," and specifically named, "Black Lives Matter" and "Take them Down 911 [sic]." (Chandler Dep. 23-24.) Chandler testified that these groups had "made no direct threat" in Memphis. (Chandler Dep. 23-24.). JIBs were celebrated within MPD as "a regional guide to area law enforcement for current and historical intel in reference to . . . BLM encounters" and focused on specific groups, despite the fact that those groups had "made no direct threat" in Memphis. (Ex. F; Bass Dep. 55-56; Chandler Dep. 23-24.) In addition to wide circulation within MPD, JIBS were disseminated to regional law enforcement and to members of the community. (Exs. G, H, I, J; Reynolds Dep. 54-55.).

3. The New Black Panther Party for Self Defense is a radical organization whose leaders have encouraged violence against whites, Jews and law enforcement officers. See https://www.splcenter.org/fighting-hate/extremist-files/group/new-black-panther-party (last visited July 9, 2018).

Response No. 3 This statement is undisputed for the purpose of summary judgment.

4. Ian Jeffries has announced himself to be a member of the New Black Panther Party to Memphis Police Director Michael Rallings. (Depo. Rallings pp. 104-05.) He has been arrested numerous times including just days after the shut-down of the I-40 Bridge, on July 21, 2016, in Southaven, Mississippi. (Depo. Rallings Ex. 57, Attached as Ex. 8). Mr. Jeffries was previously arrested, and pleaded guilty to, aggravated assault of local radio host, Thaddeus Matthews. See Case History attached as Exhibit 9.

Response No. 4 The first sentence is undisputed for the purpose of summary judgment to the extent that Defendant states that Jefferies told Director Rallings he was a member of the New Black Panther Party. Plaintiff disputes that Jefferies was a member of the New Black Panther

Party as this would be inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement being offered for the truth of the matter asserted. Plaintiff does not dispute that Jeffries was arrested on July 21, 2016 and previously pleaded guilty to assault. Plaintiff disputes that the evidence cited demonstrates that Jefferies has been arrested numerous times.

5. On around December 10, 2016, OHS received information from a reliable source that Spencer Kaaz was in Arkansas supporting the Diamond Pipeline Protest. From that information, MPD was able to work with Valero Refinery to develop a contingency plan for a possible protest that would shut down the refinery. (Attached as Exhibit 10, at Bates 20868.)

Response No. 5 Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

6. On January 16, 2017, MPD received notice that 20-30 demonstrators had assisted in placing large 55 gallon drums filled with cement at the main delivery entrance of the Valero Refinery. The drums were designed so that the demonstrators would lock arms in the middle of the cement filled barrel. Twelve persons were arrested as a result of these actions. See Exhibit 10 at 20869, 20872.

Response No. 6 Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

7. Spencer Kaaz was arrested at Valero as part of this demonstration. See Exhibit 10 at 20878.

Response No. 7 The statement is undisputed for the purpose of summary judgment that

Kaaz was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

8. Spencer Kaaz was also arrested at the Graceland Candlelight Vigil on August 15, 2016. (Pl.'s Ex. Q at 22810.)

Response No. 8 The statement is undisputed for the purpose of summary judgment that Kaaz was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

9. Paul Garner was arrested at a Graceland protest on July 12, 2016. (Pl.'s Ex. Q at 22803.)

Response No. 9 The statement is undisputed for the purpose of summary judgment that Garner was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

10. Fergus Nolan was arrested at the Memphis Zoo on May 30, 2016, when he blocked Zoo personnel from parking cars on the greensward area of Overton Park. (Pl.'s Ex. Q at 22816.)

Response No. 10 The statement is undisputed for the purpose of summary judgment that Nolan was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

11. Subsequently, MPD received reliable information that Mr. Nolan and Mr. Kaaz were using the "Save the Greensward" movement as a cover to disrupt Memphis Zoo operations in an effort to close the Memphis Zoo. (Pl.'s Ex. Q at 22815.)

Response No. 11 Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

12. An MPD investigation into this criminal enterprise between Nolan and Kaaz found that Mr. Nolan discussed hacking into the Zoo's computer system. It was then determined

that the Zoo's e-commerce site had been tampered with in such a way that it prevented the purchase of tickets from the Zoo's website. (Pl.'s Ex. Q at 22816.)

Response No. 12 Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

13. On November 29, 2016, Sgt. Cornwell of OHS emailed Mr. Howard asking of there were any city permits granted for Saturday, December 3, 2016. (Depo. Howard, Ex. 72 at 0999, Howard's Deposition Excerpt and Dep. Exhibit 72 are attached as Collective Ex. 11.) The St. Jude Marathon, Half Marathon, 10k, and 5K were held in downtown Memphis on December 3, 2016. *See* http://www.besttimescct.com/results/marathon-awards-2016.HTML (last visited July 9, 2018). Mr. Howard confirmed that it would be normal procedure for his office and other offices within the City to coordinate when a major event such as the St. Jude Marathon was occurring. (Depo. Howard, p. 46.)

Response No. 13 This statement is undisputed for the purpose of summary judgment.

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BLANCHARD, et al.

vs

THE CITY OF MEMPHIS

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Plaintiffs,

vs. Case No. 2:17-cv-02120-JPM-dkv

ACLU OF TENNESSEE, INC.,

Intervenor-Plaintiff,

vs.

THE CITY OF MEMPHIS,

Defendant.

Deposition of:

MAJOR STEPHEN CHANDLER

Taken on behalf of the Plaintiffs/ Intervenor-Plaintiff
April 25, 2018

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A. -- that was open to the public.
Q. Um-hum.
A. As well as some of the protesters themselves were overheard by uniformed personnel as stating get in with the people at campus.
Q. Were there any plain clothes officers at that vigil?
A. I don't recall if there were any plain clothes officers. I know we had uniformed personnel there. We had TASK force personnel. We had the SWAT team or what we call the TACT Unit there. We had several vehicles there in case of social unrest or civil unrest, as well as the Aviation Unit was overhead to monitor activity.
Q. Are you aware of -- let me start over.

The people who were arrested at these various protests, are you aware of whether those arrests resulted in convictions?
A. Typically, I don't follow after the arrest, the initial arrest. I know that were some were -- so the conviction, there was no conviction. The charges were dismissed in court.

MS. FLOYD: Okay. I think that's all I