

**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,)	
)	No. 2:17-cv-02120-jpm-DKV
v.)	
)	
THE CITY OF MEMPHIS,)	
Defendant.)	
)	

**PLAINTIFF’S RESPONSE IN TO DEFENDANT’S STATEMENT OF FACTS IN
SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE
OF CIVIL CONTEMPT AND STATEMENT OF ADDITIONAL UNDISPUTED FACTS**

Pursuant to Fed. R. Civ. P. 56, Plaintiff ACLU of Tennessee (“ACLU-TN” or “Plaintiff”), submits this response to Defendant’s *Statement of Undisputed Material Facts in Support of Defendant’s Motion for Summary Judgment on the Issue of Civil Contempt* and Statement of Additional Undisputed Facts.

RESPONSE TO DEFENDANT’S STATEMENT OF FACTS

1. On September 14, 1976, Chan Kendrick and several individuals who alleged that they were the subjects of unlawful surveillance by the Memphis Police Department’s (“MPD”) Domestic Intelligence Unit filed a federal court lawsuit against the City of Memphis and its then Mayor. (ECF No. 33-1, PageID 381). The Kendrick plaintiffs alleged that the City and the MPD created the Domestic Intelligence Unit to investigate and maintain files on “subversive” citizens.

(ECF No. 33-1, PageIDs 385-87). The Complaint also alleged the defendants burned the files after they were discovered and brought to the attention of local authorities rather than turning them over to the court. (ECF No. 33-1, Page Ids 387).

RESPONSE: Undisputed for the purposes of summary judgment only.

2. On September 14, 1978, the City and the remaining plaintiffs agreed upon a settlement memorialized in a consent "Order, Judgment, and Decree." (ECF No. 3, PageID 16) ("Consent Decree"). The Consent Decree prohibited the City from engaging in "Political Intelligence," which is a defined term, as is the term "First Amendment rights" contained therein. (ECF No. 3, PageIDs 16-17). In order to have "First Amendment rights" under the Consent Decree, the conduct must be "lawful." *Id.*

RESPONSE: The first and second sentences are undisputed for the purposes of summary judgment only, although the Consent Decree speaks for itself. The third sentence is neither disputed nor undisputed as it calls for a legal conclusion and the Consent Decree speaks for itself.

3. The Consent Decree contains several other provisions limiting the City and MPD's authority to investigate or gather intelligence when "First Amendment rights" are implicated. (ECF No. 3).

RESPONSE: Undisputed for the purposes of summary judgment only, although the Consent Decree speaks for itself.

4. At no time since the entry of the Consent Decree has the 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; Director Michael Rallings Depo. at pp. 107-113 (all Deposition Excerpts of Director Rallings attached as Coll.

Exhibit 2); Deposition of Major Lambert Ross at p. 77 (attached as Exhibit 3); Deposition of Major Stephen Chandler at p. 74 (all Deposition Excerpts of Major Chandler attached as Coll. Exhibit 4); Deposition of Major Eddie Bass at pp. 67-68 (attached as Exhibit 5)).

RESPONSE: Disputed. The testimony cited by Defendant does not support the proposition that MPD has not 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.)

5. The provisions of the Consent Decree have been posted since 2010 on the internal police website known as the Kiosk. (Affidavit of Larry Godwin; Rallings Depo. Ex. 49 (attached as Exhibit 6)). The provisions of the Consent Decree were adopted as Memphis Police Department Regulation 138 on December 20, 2010. (Rallings Depo Ex. 54 (attached as Exhibit 7); Affidavit of Larry Godwin).

RESPONSE: Undisputed for the purposes of summary judgment only.

6. Other than one finding of contempt in 1979 based on evidence that the MPD violated the Consent Decree by taking photographs of protestors at the National Democratic Conference (Case 2:76-cv-00449, ECF No.35, attached as Exhibit 8), until the present litigation, no person entitled to assert rights under the Decree brought a court action seeking its enforcement, other than

activity related to attorneys' fees stemming from the original action. (See also Docket Report for Case 2:76-cv-00449, attached as Exhibit 9).

RESPONSE: Undisputed for the purposes of summary judgment only. However, this assertion misrepresents the character of the evidence that was provided to Plaintiff by Defendant in discovery. The parties agreed to limit the timeframe of discovery to between July 2016 and March 2017 in the action before the Court.

7. On August 9, 2014, Michael Brown was killed by a police officer in Ferguson, Missouri. Protests erupted and continued for the next several months, during which time business were looted or vandalized and dozens of people were arrested.¹ On November 25, 2014, thousands of people rallied to protest the grand jury's decision in more than 170 U.S. cities, and National Guard forces were deployed and then reinforced at Ferguson to prevent the situation from escalating.² See Affidavit of Jennie Silk (attached as Exhibit 10).

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

8. On December 20, 2014, two New York City police officers were shot and killed by a gunman who had posted statements on social media that he planned to kill police officers and was

¹ <http://www.cnn.com/2014/08/11/us/missouri-teen-shooting/>;
<https://www.usatoday.com/story/news/nation/2014/11/24/ferguson-grand-jurydeliberations/19474907> ; <https://www.nytimes.com/2014/11/26/us/ferguson-missouriviolence.html>

² <http://www.cnn.com/2014/11/25/us/national-ferguson-protests/>

angered about the Eric Garner and Michael Brown cases.³

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

9. In April 2015, three weeks after Freddie Gray died in police custody in Baltimore, peaceful protests turned violent including looting and arson.⁴

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

10. On July 17, 2015, Darrius Stewart was killed by a Memphis Police Officer.⁵ In the aftermath, the MPD received a number of threats to officers. (Depo. of Detective Tim Reynolds at p. 20 (all Deposition Excerpts of Det. Reynolds attached as Coll. Exhibit 11)).

RESPONSE: With respect to the first sentence: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011). With respect to the second sentence: Disputed — the cited excerpt does not contain the testimony alleged

³ <https://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-inbrooklyn.html>

⁴ <https://www.cnn.com/2015/04/27/us/baltimore-riots-timeline/index.html>

⁵ <http://www.wmcactionnews5.com/story/29578116/man-dead-after-struggle-with-mpd-officer>

by Defendant.

11. In November 2015, five Black Lives Matters ("BLM") protestors were shot while protesting the officer-involved death of Jamar Clark in Minneapolis.⁶

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

12. On July 5, 2016, Alton Sterling was killed by police in Baton Rouge, Louisiana.⁷

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

13. On July 6, 2016, Philandro Castille was killed by a Minnesota police officer during a traffic stop. The incident was live streamed on Facebook by Castille's girlfriend.⁸

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

⁶ <https://www.nbcnews.com/news/us-news/jamar-clark-protests-5-shot-near-black-lives-matterencampment-n468656>

⁷ <https://www.cnn.com/2017/05/03/us/alton-sterling-doj-death-investigation>

⁸ <https://www.npr.org/sections/thetwo-way/2016/07/07/485066807/police-stop-ends-in-blackmans-death-aftermath-is-livestreamed-online-video>

14. On July 7, 2016, five Dallas police officers were killed by a sniper at a Black Lives Matter protest in Dallas, Texas.⁹

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

15. On July 10, 2016, a BLM protest in Memphis, Tennessee that started at the FedEx Forum resulted in several hundred protestors shutting down the Interstate 40 Bridge over the Mississippi River for approximately four hours.¹⁰ Then Interim Police Director Michael Rallings helped end the shutdown of the bridge by locking arms with the protestors and marching with the protestors off the bridge to the National Civil Rights Museum. (*Id.*; Rallings Depo. at 108-109).

RESPONSE: With respect to the first sentence: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011). With respect to the second sentence: Disputed — the cited excerpt does not contain all of the facts alleged by Defendant, except that Director Rallings testified that “the decision was made to walk I think it was 2.2 miles from the bridge - - and I had dress shoes like you - - from the bridge to FedEx Forum.” (Rallings Dep. 109.)

16. On July 15, 2016, events were planned in Memphis to commemorate the one year

⁹ <https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html>

¹⁰ <http://www.wmcactionnews5.com/story/32411896/protesters-blocking-i-40-bridge>

anniversary of Darrius Stewart's death. (Chandler Depo. Ex. 60, attached as Exhibit 12).

RESPONSE: Undisputed for the purposes of summary judgment only.

17. On July 18, 2016, three Baton Rouge police officers were killed by Gavin Long a prolific user of social media, with dozens of videos, podcasts, tweets and posts using a pseudonym. Long advocated for “fighting back” instead of “just over simple protesting.”¹¹

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

18. Beginning in March 2016 the MPD, Office of Homeland Security (“OHS”) was “retool[ed]” to focus on threats to law enforcement safety. (Chandler Depo. at pp. 14-15; Reynolds Depo. at pp. 14-15; 153). The mission of OHS was and is “identifying threats and trying to help [] mitigate those threats.” (Rallings Depo. at p. 91).

RESPONSE: Disputed. Defendant’s representation of the testimony omits the full context of the statements made by Chandler. Chandler testified that, in shifting its mission, OHS began 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.)

¹¹ <https://www.cnn.com/2016/07/17/us/baton-route-police-shooting/index.html>

19. On August 15, 2016, an unpermitted protest organized by the Coalition for Concerned Citizens (CCC) [sic] occurred at Graceland during the heavily attended “Elvis Week” Candlelight Vigil that resulted in several arrests.¹²

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

20. The activist group Black Lives Matter (“BLM”) was formed in 2013.¹³ One of the founders of the group stated that they were “very deliberate about how we wanted the organization to unfold. ...” “[W]e want to disrupt the spaces that represent those forces who are oppressing us...” *Id.*

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

21. BLM exploded into a national movement after the events of Ferguson. One of its core tactics was highway shutdowns. “The strategic reason is you have to make the gears of the machine stop working.” *Id.* BLM members are clear that for their protests to be truly effective they must be disruptive. A BLM activist, Mica Grim, said, “When we shut down the highway, it forces the conversation.” *Id.*

¹² <http://www.wmcactionnews5.com/story/32769120/3-arrested-during-protest-outsidegraceland-vigil>

¹³ <https://www.rollingstone.com/politics/news/toure-inside-black-lives-matter-w513190>

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

22. Such tactics are not confined to BLM. In Memphis, several activists used peaceful and for the most part lawful (permitted) protests of the Memphis Zoo’s use of the Overton Park “Greensward” as a mechanism for disrupting traffic, including lying down in the roadway and essentially forcing the Memphis police officers present to arrest them. (Depo. Reynolds p. 109; Reynolds Depo. Ex. 25 (attached as Exhibit 13), Bates label 22816-19). Several other protesters did the same thing at an unpermitted protest during “Elvis Week” in August 2016. (Depo. Ex. 25, Bates Label 22805-22812). Modern day activist groups increasingly use social media as their primary platform for disseminating information about events they are planning.¹⁴

RESPONSE: With respect to the first and last sentences: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011). With respect to the second sentence: Disputed — the cited excerpt of Reynolds’ deposition does not support the proposition for which it is cited. With respect to the third sentence: Disputed — the cited exhibit does not support the facts for which it is cited.

23. In the early morning hours of December 19, 2016, several masked individuals

¹⁴ <https://www.cnn.com/interactive/2015/08/us/disruptors/>;
<https://www.wired.com/2015/10/how-black-lives-matter-uses-social-media-to-fight-the-power/>

associated with a group called the “Coalition for Concerned Citizens” (“CCC”), including Keedran Franklin, staged a “Die-In” at Mayor Jim Strickland’s personal residence. The protestors, with their faces covered, “played dead” on the lawn, and according to the Mayor, were peering through his windows.¹⁵ One of the protestors, Keedran Franklin, livestreamed the incident on Facebook. *Id.* In that post, Franklin stated that he would be back every Monday “to have coffee with Jim [Strickland].” (Reynolds Depo. 120). The CCC parroted the “coffee with the Mayor” Franklin message. (Bates Label City of Memphis 19806-19811, attached as Exhibit 14). Since Franklin was associated with the CCC, and since he had been instructed by the Director to be a part of the (at the time) criminal investigation of the “Die In”, Detective Reynolds included open source social media posts involving the CCC as part of that investigation in an attempt to identify individuals who may have been involved with the incident. (Depo. Reynolds at p. 117; 119-120).

RESPONSE: With respect to the first, second, and third sentences: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011). With respect to the fourth sentence, undisputed for the purposes of summary judgment only that Reynolds testified that Keedran Franklin’s post said that “he would be back every Monday to have . . . coffee with Jim.” With respect to the fifth sentence, undisputed for the purposes of summary judgment only that the exhibit shows an advertisement for “Weekly Coffee with Mayor Strickland” that appears to be taken from the Coalition of Concerned Citizens Facebook page. With respect to the last sentence, undisputed that Reynolds built a list of what he termed

¹⁵ <https://www.commercialappeal.com/story/news/local/2016/12/19/group-protests-memphismayors-lawn/95628352/>

“associates in fact,” who were individuals that “may have something to do with either Keedran Franklin or the CCC” as determined by “social media contacts,” “previously arrested with,” “often seen at unlawful assemblies with,” and “that kind of thing.” (Reynolds Dep. 122, 125-26.) Director Rallings confirmed that the list was populated by individuals who had “affiliations with the die-in group and . . . protests.” (Rallings Dep. 67-68.)

24. In response to the Die-In, Director Rallings directed that the MPD come up with a way to better protect the Mayor. (Rallings Depo. at p. 64). Detective Reynolds in the OHS, recommended that the Mayor execute an Authorization of Agency (“AOA”) for the Mayor’s Home. (Reynolds Depo. at p. 121).

RESPONSE: Undisputed for the purposes of summary judgment only that Rallings testified “I did instruct my entire team to figure out a way to, you know, really open - - ask an open-ended question of how can we better protect the mayor’s home.” (Rallings Dep. at 64.) With respect to the second sentence, disputed that the cited deposition excerpt states the facts provided.

25. An AOA is an internal police form that notifies officers of known criminal trespassers on a specific property. The purpose of an AOA is to empower the police to arrest the persons listed on the AOA should they trespass again on that property without having to notify the property owner. A person included on an AOA should receive notice of their inclusion on the AOA. (Bonner Depo. at pp. 15-17 (all Deposition Excerpts of Bonner attached as Coll. Exhibit 15)).

RESPONSE: Undisputed for the purposes of summary judgment only.

26. Detective Reynolds obtained the names for the AOA list from open source social media contacts of Franklin and the CCC, as well as looking up the identities of individuals arrested along with Franklin in the past. (Reynolds Depo at p. 122). Reynolds’s list included persons that had

either attended, publicly supported, or encouraged unlawful, unpermitted protests, including the Graceland protest. (Depo Reynolds at pp. 122-123). Detective Reynolds “populated” the list of “associates in fact” of Franklin and the CCC into the AOA for the Mayor's home. (Reynolds Depo at pp. 122; 125-126). On January 4, 2017, the Mayor signed the AOA for his personal residence. (See Bonner Depo. Ex. 1, Attached as Exhibit 16).¹⁶

RESPONSE: Undisputed for the purposes of summary judgment only that Reynolds built a list of what he termed “associates in fact,” who were individuals that “may have something to do with either Keedran Franklin or the CCC” as determined by “social media contacts,” “previously arrested with,” “often seen at unlawful assemblies with,” and “that kind of thing.” (Reynolds Dep. 122, 125-26.) Reynolds’ use of the term “unlawful assembly” refers to any assembly of more than 25 people without a permit; accordingly, many of the assemblies to which he refers are not in fact in violation of any law or ordinance. Rather, Reynolds has designated them as unlawful due to an incorrect understanding of the city ordinance in question. (Reynolds Dep. 37.) *See 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.”). Director Rallings testified that the list was populated by individuals who had “affiliations with the die-in group and . . . protests.” (Rallings Dep. 67-68.)

27. An “Escort List” pre-dating the current administration was for the use of police officers

¹⁶ There is no evidence in the case that Mayor Strickland had input into this list, suggested names for it, or had anything to do with its preparation other than signing it to protect his personal residence.

providing security at City Hall. It consisted of identifying information regarding certain former employees or individuals known or observed by law enforcement or city employees to have engaged in disruptive conduct or who have expressed a willingness to commit disruptive acts while in City Hall. Once a person's name was on that City Hall Escort List, that person is allowed to enter City Hall, but that person must identify where they are going and who they intend to see. They might require an escort while in the building. (Bonner Depo. at pp. 17-19).

RESPONSE: Undisputed for the purposes of summary judgment only.

28. The Mayor executed the AOA for his personal residence on January 4, 2017. Lt. Bonner added the persons on the AOA to the pre-existing City Hall Escort List. He did this because he was trying to make sure if any of the individuals who trespassed at the Mayor's home came to City Hall, security team would be on notice of the potential for disruption. (Bonner Depo. at p 28).

RESPONSE: Undisputed for the purposes of summary judgment only that the Mayor executed the AOA for his personal residence on January 4, 2017. Undisputed for the purposes of summary judgment only that Bonner wrote at the top of the AOA: "All listed have to be escorted while inside of City Hall." (Bonner Dep. 27-28.) In explaining his reasoning, Bonner testified: "I was trying to make sure if any of these people came to City Hall I wanted to make sure they didn't come inside City Hall and have the same kind of event inside City Hall." (*Id.*)

29. On January 16, 2017, several individuals handcuffed themselves to 55-gallon drums filled with cement and blocked the entrance to the Valero Oil terminal in Memphis. Twelve people were arrested.¹⁷

¹⁷ <http://www.wmcactionnews5.com/story/34269630/protesters-handcuff-themselves-to-barrels-at-valero-memphis-terminal>

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

30. On January 17, 2017, one day after the Valero Protest, the names of the persons arrested at Valero were added to the AOA list used by Lt. Bonner at City Hall. (Bonner Depo Ex. 1, pp. 9-10).

RESPONSE: Disputed — the cited exhibit does not contain the facts alleged by Defendant.

31. On February 7, 2017, Fergus Nolan attended a City Council meeting at City Hall, Although his name was on the AOA list added to the City Hall list, he was not escorted. (Bonner Depo at p. 49; Bonner Depo Ex. 7 (attached as Exhibit 17)). *Id.*

RESPONSE: Disputed — the cited exhibit states that “[Polk] informed Mr. Fergus to remain in the lobby and the supervisor of the Mayor’s Dignitary Protection Unit, Lt. Bonner, would explain further details about his visits while inside of city hall. As a result of the previous threats that were made against the Mayor and the Police Director precautionary measures were taken allowing Mr. Fergus to attend the City Council meeting while being escorted by a member of the Mayor’s Dignitary Protection Unit.” Accordingly, the document indicates that Mr. Fergus was escorted while in City Hall.

32. On March 1, 2017, after two lawsuits were filed against the City related to the Escort List, the City removed the names of the persons listed on the AOA for the Mayor's home and the

names of the persons arrested at the Valero Terminal from the City Hall Escort List.¹⁸

RESPONSE: Objection — factual statements unsupported by admissible evidence. Statements based on news links are inadmissible hearsay. *Cary v. Cordish Co.*, No. 17-5103, 2018 WL 1734696, at *3 (6th Cir. Apr. 10, 2018); *Adcock v. City of Memphis*, No. 06-2109-STA, 2011 WL 13269785, at *1 (W.D. Tenn. Jan. 4, 2011).

33. None of the persons listed on the Mayor's AOA or even the arrestees from the Valero protest have ever been subject to an escort through City Hall, despite their names being on the Escort List for a brief time. (Bonner Depo at pp. 56-57). For example, Ian Jeffries, who was on the AOA/Escort List, attended a City Council meeting without an escort on January 17, 2017. (Bonner Depo Ex. 5 (attached as Exhibit 18); Depo. Rallings at pp. 71, 104).

RESPONSE: Disputed — the Bonner Dep. Ex. 7 (attached to Defendant's Statement of Facts as Exhibit 17) states that "[Polk] informed Mr. Fergus to remain in the lobby and the supervisor of the Mayor's Dignitary Protection Unit, Lt. Bonner, would explain further details about his visits while inside of city hall. As a result of the previous threats that were made against the Mayor and the Police Director precautionary measures were taken allowing Mr. Fergus to attend the City Council meeting while being escorted by a member of the Mayor's Dignitary Protection Unit." Accordingly, the document indicates that Mr. Fergus was escorted while in City Hall. Further, Bonner Depo Ex. 5 (attached to Defendant's Statement of Facts as Exhibit 18) is an e-mail from Director Rallings rebuking Lt. Bonner for *failing* to escort Ian Jeffries, states that Rallings "alerted the desk and Mowrey came up." It concludes: "You Need to brief your staff and make sure they recognize individuals on the Mayors AOA" (capitalization in original).

¹⁸ <https://www.commercialappeal.com/story/news/government/city/2017/03/01/fast-foodworkers-sue-memphis-over-city-hall-blacklist/98584058/>

Defendant's own exhibits document two instances of individuals being escorted.

34. Threats continue to be made through social media postings by certain individuals to disrupt, shut down, or otherwise interfere with commerce, traffic, or public safety in Memphis. For example, Frank Gibson, a person involved with the bridge shutdown on July 10, 2016, has threatened repeatedly to return to the bridge to shut it down again. Other threats have been made to Graceland and other entities. (Rallings Depo. at p. 73-74).

RESPONSE: With respect to the first sentence, disputed — unsupported by citation to the record. With respect to the second sentence, undisputed for the purpose of summary judgment only that Rallings testified that Frank Gibson “was on the bridge,” that he calls Director Rallings “any time there’s an issue,” and “every time things don’t go right with Frank, he threatens to go back to the bridge.” (Rallings Dep. 73.) With respect to the third sentence, disputed — cited deposition testimony does not support statement.

35. One of the purposes behind the creation of The United States Department of Homeland Security was to form partnerships among law enforcement to prevent terrorist attacks against the United States.¹⁹ A critical part of those partnerships were the Joint Terrorism Task Forces.²⁰ MPD participates in the Joint Terrorism Task Force, along with over 500 other state, federal, and local law enforcement agencies. *Id.*, and Godwin Affidavit.

RESPONSE: With respect to all sentences, objection — factual statements unsupported by admissible evidence. With respect to final sentence, undisputed for the purpose of summary judgment only that MPD participated in the FBI’s Joint Terrorism Task Force.

¹⁹ <https://www.dhs.gov/topic/law-enforcement-partnerships>

²⁰ <https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces>

36. The monitoring of social media accounts by MPD is conducted through the OHS and, in some instance, its “Real Time Crime Center.” (Depo. Reynolds at p. 24, 43-44, 45). Two MPD employees presently work in the OHS, Detective Reynolds and Sgt. Cornwell. (Depo. Reynolds at p. 16). These individuals have been trained to gather intelligence relating to large public gatherings, threats to large crowds, national trends and “threat mitigation.” (Depo. Reynolds at pp. 17-18).

RESPONSE: With respect to first and second sentences, undisputed for the purpose of summary judgment only. With respect to the third sentence, disputed in so far as statement of fact omits the context that Reynolds stated that “our training is sparse.” (Reynolds Dep. 18.)

37. The main focus of OHS was “isometric threats to the public” after 9/11, with the initial focus about “what was happening in the Middle East.” (Depo. Reynolds at p. 19). The concern is now Las Vegas style police shootings, vehicles being driven into crowds, people carrying illegal bombs, whether domestic terrorism or part of a larger conspiracy.” (Depo Rallings at 20).

RESPONSE: With respect to first sentence, undisputed for the purpose of summary judgment only. With respect to second sentence, disputed in that the cited deposition excerpt does not state the testimony quoted. Further, it is disputed because it omits the context provided by Chandler’s testimony. 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.)

38. July through December, 2016 “was a very bad year for officer threats, police involved shootings and demonstrations.” (Depo. Reynolds at p. 22). Even if individuals obtain a permit for a protest, “there are still things that can happen to these people that we would be responsible for, like someone gets shot.” These concerns were quite real for the MPD during this time frame. (Depo. Ex. 35-45 (attached as Coll. Exhibit 19); Depo. Reynolds at pp. 153-171; 173-179).

RESPONSE: With respect to first sentence, undisputed for the purpose of summary judgment only. With respect to second sentence, disputed as no citation to the record has been provided. With respect to the third sentence, not disputed or undisputed as the meaning of the sentence is unclear.

39. After a "few demonstrations" the OHS realized that people can gather in certain areas with very little warning and are often not applying for permits. (Depo. Reynolds, p. 24). OHS began to monitor social media accounts to “handle high profile protest activities” following Sgt. Reynolds’ visit to Nashville in 2016 to observe how the Nashville law enforcement authorities handled an unpermitted Black Panther rally. (Depo. Reynolds, pp. 99-100.²¹) OHS also began in 2019 the daily distribution of what is known as the Joint Intelligence Bulletin ("JIB"). 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)

RESPONSE: With respect to first sentence, undisputed for the purpose of summary judgment only that Reynolds testified that “these people can - - people can gather in certain areas with very little warning as far as we’re coming.” (Reynolds Dep. 24.) With respect to the second sentence, disputed as the cited deposition excerpts do not state that OHS began to monitor social

²¹ See below Paragraph 39.

media as a result of his 2016 trip to Nashville. With respect to the third and fourth sentences, disputed in that they omit the full context. 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.²² (Ex. E.) 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.)

Fn 21: OHS sometimes use "sources" which can include Facebook names which "friend" some of the individuals involved in the unlawful protest activities which are of concern to the MPD. (Depo. Ex. 24 (attached as Exhibit 21); Depo Reynolds 91-98). The specifics of the use of such sources is the subject of a law enforcement privilege objection. *Id.* But there is no evidence that Detective Reynolds or anyone else in the MPD uses such sources "for the purpose of political intelligence" or that the MPD uses such sources to "infiltrate" groups or organizations "exercising First Amendment rights" as set forth in the Kendrick Decree at Section E.'

RESPONSE: Disputed. The conduct described in Fn 21 violates the Decree. Furthermore, the only reason Plaintiff lacks specific evidence of further violations using surreptitious social media accounts is because Defendant has refused to provide the evidence in discovery. Defendant cannot rely on its own refusal to provide evidence as a basis for claiming that Plaintiff has no

²² 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.)

evidence.

40. In 2016 Director Rallings requested that Sgt. Reynolds in OHS prepare a spreadsheet of demonstrations and protests. (Depo. Ex. 8 (attached as Exhibit 20); Depo. Rallings, pp. 54-55). The purpose of this spreadsheet was so that Director Rallings could make certain that he knew how many civil disturbances the MPD responded to for budgetary purposes. (Depo. Rallings, p. 55). Director Rallings estimates that 3% of his overtime budget of almost \$25 million dollars has been spent responding to protestor crowds or some type of demonstrations. (Depo. Rallings, p. 55).

RESPONSE: With respect to the first sentence, undisputed for the purposes of summary judgment only. With respect to the second and third sentences, undisputed that Rallings testified that that was his purpose, disputed that Rallings' testimony provides full context. Reynolds testified that OHS tracked "Key Members" involved in free speech events to track the "pattern" of leadership. (Ex. P; Reynolds Dep. 30-31)

41. Although the vast majority of the events appearing on this spreadsheet did not obtain the requisite permits, very few arrests were made, and with a few exceptions the MPD allowed all of the individuals at these unpermitted events to exercise their right to protest. (Depo. Rallings, p. 55). MPD has not disbursed or otherwise interfered with any of those protests. (Depo. Rallings, pp. 59-60; 81). The Director was concerned about recognizing the right to protest and having it done lawfully (Id. at 81).

RESPONSE: With respect to the first sentence, disputed many of the events on the spreadsheet required no permit. Disputed that the Director was concerned about recognizing the right to protest. (Ex. B.) Disputed that MPD did not interfere with protests. (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.)

ADDITIONAL STATEMENT OF FACTS

Essentially, Plaintiff and Defendant's Motions for Summary Judgment are mirror images of one another with respect to the issue of contempt. Plaintiff argues that the law applied to the undisputed facts justifies an entry of summary judgment against Defendant. Defendant argues that the law applied to the undisputed facts justifies an entry of summary judgment against Plaintiff. Accordingly, in asserting additional undisputed facts which would make inappropriate an entry of summary judgment in Defendant's favor, Plaintiff incorporates its Statement of Undisputed Facts as if fully stated herein. (Doc. No. 79-2.)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 9, 2018 the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and served via electronic mail to:

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