DEFENDANT'S EXHIBIT
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CIV-2016-184-HE

The City of
OKLAHOMA CITY
OFFICE OF THE MUNICIPAL COUNSELOR
KENNETH JORDAN
Municipal Counselor

January 25, 2019

Melvin Hall
Riggs, Abney, Neal, Turpen,
Orbison & Lewis, PC
528 NW 12th Street
Oklahoma City, OK 73103

Damario Solomon-Simmons
502 West 6th Street
Tulsa, Oklahoma 74119

Re: *Barnes, et al. v. The City of Oklahoma City, et al.*, CIV-16-184-HE

Counsel:

I have reviewed the January 15, 2019 letter of Mr. Solomon-Simmons complaining about the City's Responses to Plaintiffs' 14 written discovery requests served in this case. His letter continues with misrepresentations of the law, facts of this case and the City's responses. Further, it is apparent that when this letter was written, he had not reviewed the 27,644+ pages of documents already provided to you. It is also apparent he believes that he is a police administrator instead of an attorney making (erroneous) allegations.

His letter is also internally inconsistent with its repeated references to Motions to Compel to be filed yet being "hopeful" to resolve conflicts without Court involvement. Your clients' requests are also inconsistent. In Ligons' Request for Admission No. 23, you ask the City to admit that Holtzclaw was not disciplined for violating OKCPD [sic] rules regarding Campbell, yet in Johnson's Request for Admission No. 1, you state he was. In any event, you have been provided with the documentation regarding the verbal counseling he was given for his failure to report that use of force (memo from Captain Bill Patten to Major Jennings, and memo from Major Jennings to the Use of Force Board attached to Defendant City's Responses to Plaintiff Johnson's First Requests for Production of Documents (sic)), and he repeatedly asked Lt. Bennett about this counseling at his deposition and introduced as Plaintiffs' (Depo.) Exhibit 19, yet another document about his counseling.

Your insistence that the lack of a personal evaluation of Holtzclaw in the year 2014, equates to a "failure to supervise" is in conflict with the production of the Use of Force investigations of Holtzclaw (these investigations were previously provided without a Bates No., please find a Bates Numbered set on the cd provided, Bates Nos. 28542-29228), the investigation into the Citizen's

Complaint against him (Bates Nos. 9262-9300), and his placement in the OCPD EIP program. (Bates Nos. 4651-4653, 5042-5044, 6214-6216, 6222-6232, 7505-7520, 7805, 11581-11631.) It also ignores that an alleged violation of a police procedure is not relevant. *Wilson v. Meeks*, 52 F.3d 1547, 1554 (10th Cir. 1995 citing *Davis v. Scherer*, 468 U.S. 183, 194 (1984)) remanded on other grounds and affirmed at 98 F.3d 1247 (10th Cir. 1996), *Tanberg v. Sholtis*, 401 F.3d 1151 (10th Cir. 2005) and *Romero v. Board of County Commissioners*, 60 F.3d 702 (10th Cir. 1985) cert. denied, 516 U.S. 1073 citing *Wilson*. Id.

At page 4 of this letter, he makes the claim that the OCPD Policies and Procedures are "the law" and that the City is required to apply "the law" to the facts in responding to your discovery. He has provided no authority that a police policy or procedure is "the law," and I have provided authority to the opposite. Regarding the OCPD Policy and Procedures, he claims at page 2, second full paragraph, that the responses to the Plaintiffs' November 2016 Request for Production of Documents No. 4 was inadequate because it did not contain any "Standard Operating Procedures." That request did not ask for any Standard Operating Procedures nor does your letter specifically ask for any units' Standard Operating Procedures. While I believe that any such Standard Operating Procedures are not relevant, I am providing copies of SOPs for Springlake Division (Bates Nos. 27744-27776), Sex Crimes (Bates Nos. 27719-27743) and the Office of the Professional Standards (Bates Nos. 27645-27657) (effective through 2014) on the enclosed cd. (If you wish to review any other Units' Standard Operating Procedures, please advise and I will provide copies if arguably relevant).

Regarding the next paragraph on this page (and repeated in part at p. 3), he complains that he was not advised whether Lt. Bennett was disciplined for his investigation into Holtzclaw's Use of Force involving Ms. Campbell. You have been provided with his personnel file and deposed him for over 7 hours. There was no discipline for his investigation in his file. In any event, he was not disciplined because the OCPD did not find he did anything wrong.

Regarding your client Johnson's Request for Admission Nos 2-7, as you have been advised, the alleged violation of a police procedure is not admissible or relevant in a § 1983 case. An alleged failure to discipline cause of action in this Circuit is not recognized. His questioning at the depositions of Defendants Bennett and Gregory demonstrates that he would rather argue over whether someone violated his interpretation of a police procedure than attempt to discover the facts of this case.

It also is apparent that your wish to discover use of force reviews for all uses of force by the OCPD for 5 years is disproportionate to the needs of the case. You will refuse to accept the OCPD's determination on each use of force thereby requiring litigation of all such uses of force, which is prohibited by *Tanberg v. Sholtis*, 401 F.3d 1151, 1164 (10th Cir. 2005) (and his misrepresentation of these reviews as complaints of excessive force, as he did in the deposition of Det. Gregory, further confirm his misunderstanding of police procedures and reviews). In short, the City stands on its objections to Plaintiff Johnson's Requests for Production Nos. 2, 4 and 5 and Johnson's Requests for Admission Nos. 2-7.

Regarding "communications with the FOP," Plaintiff's Request for Production No. 6, his statement that I skipped over the request regarding communications between the City and the FOP ignores the objection to this Request. (Unless you narrow this request to people, I can't search emails for communications between two entities.) It ignores the production of two emails from Captain Vance Allen referring to FOP President John George. Bates Nos 7570 and 7573. It ignores the emails from Chief Citty to John George regarding Holtzclaw's family's attempt to raise money for legal defense by posting photos of him in uniform (0627-0629). The production of the emails from Captain Allen (and the email you introduced as Plaintiffs' Exhibit No. 12 to Gregory's deposition) negates your "suggestions" that I withheld any communication with this office when I was just copied on it since I am copied and/or referred to in those emails. In short, the only emails I withheld for attorney-client privileges were those that were sent to members of this office asking for legal advice or I sent advising the OCPD of legal proceedings. There still is no requirement for a privilege log in this district.

Your request for information regarding "awareness of the City" of Holtzclaw's involvement in Clifton Armstrong incident is just as ludicrous. The City is a municipal corporation. Obviously the OCPD was aware of Holtzclaw's involvement in that incident almost immediately (see CAD Incident Report, Bates Nos. 28484-28496) and Chief Citty was aware of it within hours. (Call Out Sheet, Bates No. 28497.) He was also aware of Armstrong's mother and grandmother reporting that the officers did nothing wrong and that they had filled out Third-Party Affidavits to have Armstrong temporarily committed. He was aware that an attorney filed a Notice of Tort Claim and then a lawsuit misrepresenting the facts within a day or so after they were filed and served. So what? You have advised the Court that your (erroneous) theory is that the OCPD discriminated against black women (Response to Defendant Bennett's Motion for Summary Judgment, Doc 159 at pp. 23-25). Since Clifton Armstrong was not a black female, this request is irrelevant and clearly a fishing expedition.

Regarding the "knowledge of the Chief" regarding complaints of unwanted sexual assaults, his chain of command calls him on the telephone if they believe such complaints have validity. There is no requirement that I review every investigation report, identify each officer and ask, "who did you notify and how did you notify them?" Such a complaint is further indication that you are just "fishing."

Regarding his erroneous allegation that the OCPD Use of Force review is a whitewash (and again I note that there is no constitutional requirement to review any officers' use of force, *Wilson*, 52 F.3d at 1557), there is no constitutional requirement that the OCPD make a determination that would satisfy a lawyer making erroneous allegations. To the contrary, in 2007, the Commission on Accreditation for Law Enforcement Agencies, Inc., (CALEA), accredited the OCPD. (This organization is referred in the U.S. Supreme Court decision in *Tennessee v. Garner*, 471 U.S. 18 (1985)). (Bates Nos. 28498-28538, enclosed on cd.) This agency reviewed the various activities of the OCPD and found that the OCPD's use of force regulations are thorough and require… "an investigation by a supervisor of the next highest rank." (Chapter 1, p. 22 of CALEA's January 15, 2007 Assessment Report, Bates No. 28521). It further describes the review process for each use of force (*id).* They found the OCPD had a "very comprehensive Code of conduct" (p. 26 of

Chapter 26, Bates No. 28525); an "emphasis on quality training" which was "very evident" (p. 27 of Chapter 33, Bates No. 28526) and states IA's investigations "are very thorough, well documented and consistent with agency directives...", Chapter 52 at p. 30. On March 27, 2010 and March 17, 2013, CALEA again awarded the OCPD Accreditation. (Bates Nos. 28539-28541, enclosed on cd.)

I also note you fail to address the Orders I provided you rejecting production of other non-defendant officers' personnel files, Responses to Johnson's Requests for Production Nos. 4 and 5.

Regarding your complaint about Holtzclaw and the EIP, you were provided with the documents that advised his command of the reason for his being placed on the EIP (and you misrepresented them at the deposition of Defendant Gregory). Bates Nos. 4651-4653, 5042-5044, 6214-6216, 6222-6232, 7505-7520, 7805, 11585-11631.

You have been provided with the OCPD investigative memos of all sexual assault (and not harassments because that is not an issue in this case) complaints against police officers made in the 3 years prior to Holtzclaw's assaults. You have been provided with *Martinez* investigation, which like Holtzclaw, resulted in criminal charges being filed against the officer and administrative proceedings being brought against him. Both those administrative proceedings memos (also provided in discovery) list the OCPD policies and procedures that the police administrators believed the officers conduct violated, contrary to his claim that there are no such policies.

He has cited no authority that the OCPD can regulate an officer's sexual contact with his/her spouse by his repeated insistence to broaden the issues in this case to any "sexual activity." Ligons' Request for Admission No. 1. As the Supreme Court stated in *Graham v. Connor*, 490 U.S. 386, 394 (1989) citing to its earlier opinion in *Baker v. McCollan*, 443 U.S. 137, 140, 144 n. 3, (1979), the first issue is any § 1983 case is "to isolate the precise constitutional violation with which [the defendant] is charged." The issue in this case is the unwanted sexual assaults of black females by a police officer. Your requests are overly broad. Your claim of racial bias, etc., are not only repugnant, they are belied by your actions in this case – you have sued two individuals who actually believed your clients and alleged an erroneous motivation for their actions your client (Ms. Ligons) does not believe.

Regarding Johnson's Request for Production No. 21, I am not going to attempt to identify those criminal and civil lawsuits involving OCPD officers like you ask. You can review Court records yourself. Such a pursuit would not reveal any admissible evidence. Additionally, you have already falsely accused me of manufacturing and/or hiding evidence. There is no City index of criminal lawsuits brought against an officer and the City would have to rely upon the memories of police administrators to recall those officers who have been prosecuted. I have already advised you of two officers that have been prosecuted for sexual assaults. Regarding the Citizen's Advisory Board and cases of "public concern," I am sorry you do not understand the definition of "public concern." Perhaps you should watch the media.

Lastly, it is apparent you want to argue just to argue. In Ligons' Request for Admission No. 24, your client asked if the City would admit that Campbell made a police report. I advised you of what exactly happened – a nurse called 911 (and you were provided with the call). Lt. Bennett interviewed her and Holtzclaw wrote a report (which you were provided with), which was filed in the OCPD's Varuna system. Lt. Bennett's Use of Force report was filed with the Office of Professional Standards after the Screening Committee reviewed it (which you were provided with). I guess I need to deny the actual request since Ms. Campbell cannot make a police report, only officers and report takers can. Satisfied?

The City stands by its objections and responses. I will be happy to meet with you and discuss this matter.

Sincerely,

Richard C. Smith
Assistant Municipal Counselor

RCS/rp
Enclosures

cc: Ambre Gooch
Kathleen Zellner
Cody Gilbert