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

LINDA CHATMAN as Special Administrator of the Estate of CEDRICK CHATMAN, deceased, Plaintiff, v.	)	Judge Gettleman
	)	13 CV 5697
CITY OF CHICAGO, a municipal corporation, LOU TOTH, KEVIN FRY, and others not presently known to Plaintiff, Defendants.	)	Jury Demand

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION TO VACATE AND DISSEMINATE

NOW COMES the plaintiff, Linda Chatman, by her attorneys, Brian W. Coffman, Coffman Law Offices, Mark F. Smolens, Richard R. Mottweiler, and Nicole L. Barkowski, Mottweiler & Smolens, LLP, and pursuant to this Court's scheduling Order of December 9, 2015, respectfully submits the following reply memorandum in support of her motion to set aside the previously entered protective order and allow for public dissemination of video evidence of the shooting death of the plaintiff's decedent, Cedrick Chatman:

At the recent presentation of plaintiff's motion seeking review by this Court of Magistrate Brown's November 19 ruling on her motion seeking relief from the previously entered protective order, this Court (after having reviewed the videos in question) asked the parties to submit additional briefing on this issue based upon the Seventh Circuit's decision in *City of Greenville, Ill. v. Syngenta Crop Protection, LLC*, 764 F.3d 695 (7th Cir. 2014). There, the reviewing panel addressed at some length the tension between

the right to shield from the public eye materials generated during discovery in a case and the disclosure of those materials used by the Court in its decision-making process. Explaining what is described as *dicta* from the Seventh Circuit's prior decision in *Bond v. Utreras*, 585 F.3d 1061 (7th Cir. 2009), Judge Easterbrook wrote:

> "Public access depends on whether a document 'influenc[ed] or underpin[ned] the judicial decision.' *Baxter International, Inc. v. Abbott Laboratories*, 297 F.3d 544, 545 (7th Cir. 2002)."

Greenville v. Syngenta, 764 F.3d at 698. In the instant case, then, the "presumption of public access" will turn on whether or not the video evidence will be used by this Court in its determination of the contested issues presented by the two motions for summary judgment which are now pending.

Defendants correctly note that the summary judgment motion filed on behalf of defendant Toth is now fully briefed. However, the next claim, that "[n]o party cited or attached the videos as evidence," (Doc. #174, Defendants' Response, p. 4) is plainly and simply a misstatement of the record. In her response to paragraph twenty-two of defendant Toth's Statement of Uncontested Facts, plaintiff states:

> 22. As Officer Toth ran down the sidewalk behind Mr. Chatman in pursuit, Mr. Chatman slightly turned his upper body toward the right. Exh. C at 31:14-32:18; Exh. D at 83:3-7, 84:24-85:11.
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> RESPONSE: While the defendant officer so claims, the plaintiff denies the assertions of this paragraph twenty-two. In fact, ***the videos of this occurrence*** do not contain any such indication of any "turns" by the

> plaintiff's decedent before Officer Fry summarily executed Cedrick Chatman on January 7, 2013. The jury in the instant case – or indeed this Court in its consideration of the instant motion – need not accept Toth's assertions. ***The videos speak for themselves***, and a reasonable jury may indisputably conclude that no evidence of any such turn, however slight the claim is, ever took place.

(Doc. # 130, Plaintiff's Response to Def. Toth Rule 56.1 Statement, ¶ 22)(emphasis added)[1]. This Court can also utilize the video evidence when considering (and rejecting!) paragraph twenty-five of Toth's Rule 56.1 Statement. *See also* Doc. # 131, Plaintiff's Statement of Additional Facts, ¶ 8. The express provisions of Rule 56 permit this Court to consider "materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed.R.Civ.P. 56.1(c)(1). Because the video evidence of the shooting death of the plaintiff's decedent should (will?) play a part in this Court's determination of defendant Toth's request for summary judgment, for that reason alone the plaintiff's motion should be granted.

Even more important to this motion, however, will be the plaintiff's response to the summary judgment request made on behalf of the City of Chicago. As this Court is

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[1]Although the videos themselves were not filed as part of plaintiff's response to the Toth summary judgment, that course of action occurred because the videos were going to be presented to the Court as part and parcel of the response to the City's assertion of entitlement to a Rule 56 judgment as a matter of law – that response has not, for the reasons discussed below, yet been filed.

no doubt well aware, the plaintiff's response to that motion was due to be filed at the same time as the response to the Toth motion. However, at the end of July plaintiff's counsel became aware of multiple media reports about a dispute between a supervisor at IPRA and his superiors – and allegations that Mr. Lorenzo Davis had been pressured by those superiors to change his findings in investigations into allegations of misconduct against Chicago police officers, from sustained to not sustained. As it now turns out, Mr. Davis has filed a "whistleblower" suit against the City, alleging that he was terminated because of his refusal to change his findings – and it appears that the incident which ended Mr. Davis's career with IPRA was the shooting of Cedrick Chatman! These new allegations created an entirely new set of issues relative to the need for discovery into Davis's allegations and their impact or role on the instant case.

Now, before this Court counsel for the defendants blatantly mischaracterize the plaintiff's wrongful death claims against the municipal defendant. In her Amended Complaint, the plaintiff alleged, *inter alia*:

> "21. Subsequent to the shooting of CEDRICK CHATMAN, defendants FRY and TOTH, along with other employees and supervisory personnel from the City of Chicago Police Department, participated in an orchestrated plan or scheme to cover up or conceal the misconduct of the individual defendant officers in taking the life of the plaintiff's decedent without any lawful justification whatsoever.
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> 22. That plan or scheme consisted of one or more of the following actions:

a. Preparing or assisting in the preparation and filing of false and misleading police reports which were designed to justify, after-the-fact, the misconduct alleged herein above;

b. Making or permitting to be made false assertions and statements to individuals investigating the shooting of the plaintiff's decedent by one or more members of the City of Chicago Police Department about the actions of the plaintiff's decedent immediately prior to his being gunned down in the street by the individual defendant officers;

c. Making false statements to local media or media spokesmen about the actions of the plaintiff's decedent immediately prior to his being gunned down in the street by the individual defendant officers, resulting in the publication of false newspaper and internet stories about the manner in which CEDRICK CHATMAN's life was taken by the Chicago police; and

d. Failing to make all reasonable efforts to locate additional witnesses to the shooting of CEDRICK CHATMAN."

(Doc. # 75, Amended Complaint, ¶¶ 21 and 22). Those particular factual assertions became a specific portion of the plaintiff's state law wrongful death claim in Count II of the Amended Complaint. Indeed, the plaintiff specifically alleged that the City of Chicago: "Allowed TOTH and FRY, in conjunction with other employees and supervisory personnel of the Police Department, to participate in an orchestrated plan or scheme to cover up or conceal the misconduct of the individual defendant officers in taking the life of the plaintiff's decedent without any lawful justification whatsoever.

(Doc. # 75, Amended Complaint, ¶ 31(i)). It is that portion of the plaintiff's wrongful death claim for which the Lorenzo Davis evidence will become the basis for the plaintiff's response to the City's request for a Rule 56 judgment.

On information and belief[2], Mr. Davis will testify that he, in his capacity as the supervising investigator into the death of Cedrick Chatman on January 7, 2013, had an opportunity to review the videotapes of the incident at issue. It is further believed that Mr. Davis will testify that based in part upon his review of those videos, that he found and prepared findings that the shooting death of Cedrick Chatman was unjustified, but that Mr. Scott Ando and other individuals at IPRA refused to accept his findings, and attempted to pressure him into changing those findings to conclude that Officer Fry's use of force in this case was justified. As the result of Mr. Davis's refusal to do so, he was disciplined – all of which was part and parcel of the City of Chicago's and its purportedly "Independent" Police Review Authority's attempt to cover up and conceal evidence of misconduct by a Chicago police officer.

Because the videotapes depicting the shooting death of Cedrick Chatman are clearly evidence which support the plaintiff's responses to summary judgment requests for claims against both the municipal defendant City of Chicago and Officer Toth, based upon *Greenville v. Syngenta* the presumption of public access to those materials clearly outweighs any considerations to the contrary. It is indeed the height of irony that while counsel for the parties were before this Court last December 9th when the plaintiff's

[2]Based not only upon media accounts of statements by Mr. Davis, but upon conversations with Davis and his attorneys in his pending litigation.

motion was initially presented, the lawyers for the defendants were emphatically arguing against public disclosure of this evidence – all while the Chief Executive of the City was holding a press conference a few blocks north of the courthouse loudly exclaiming a new era of transparency and accountability.

WHEREFORE, for the reasons set forth herein above, the plaintiff respectfully requests this Court enter an Order setting aside Magistrate Brown's order of November 19, 2015, and allowing the public dissemination of evidentiary materials which will indisputably be part and parcel of this Court's summary judgment determinations in this case.

/s/ Mark F. Smolens
One of the attorneys for plaintiff

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