

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LISA ZALASKI,
ANIMAL RIGHTS FRONT, INC., AND
DEREK OATIS
PLAINTIFFS,

v.

CITY OF HARTFORD AND
SERGEANT ALBERT
DEFENDANTS.

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: CIVIL ACTION NO. 3:08cv601(VLB)
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: NOVEMBER 18, 2011
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Order on Motions in Limine [Dkt. #s 131 and 132]

A. Defendants' [Dkt. # 131] Motion in Limine

The Court denies Defendants' motion in limine to preclude the testimony of Attorneys Mark Dumas, Edward Schenkel or other counsel of the Crumbie Law Group or the City of Hartford as the Court's previous orders on Plaintiffs' motions for sanctions were not evidentiary rulings. See [Dkt. #s 59 and 60]. However, Plaintiffs have failed to establish what material fact at issue such testimony would tend to prove or disprove and therefore has not established the relevance of such testimony. Accordingly, such testimony may not be offered.

B. Plaintiffs' [Dkt. # 131] Motion in Limine

Plaintiffs' objection to permitting the testimony of Defendant Sergeant Albert is overruled as Fed. R. Civ. P. 37 instructs that the least restrictive sanction suitable to ameliorating the adverse effect of the failure comply should be granted and precluding Albert's testimony would be a particularly severe and

prejudicial sanction particularly in light of Plaintiffs' foregone opportunity to ameliorate any prejudice it may have suffered.

Plaintiffs' objection to the police dispatch report on the basis of hearsay is sustained in part. The police reports themselves are admissible as a business record under Fed. R. Evid. 803(6) or a public record under Fed. R. Evid. 803(8). *Tokio Marine Management, Inc., v. M/V Zim Tokyo*, Nos.91CIV.0063, 1993 WL 322869, at *9 (S.D.N.Y. Aug. 17 1993) (citing *Parsons v. Honeywell, Inc.*, 929 F.2d 901, 907 (2d Cir. 1991)). The entries in the police reports "which result from the officer's own observations and knowledge may be admitted but [] statements made by third persons under no business duty to report may not." *Id.* (internal quotation marks and citation omitted). Statements by third persons recorded within the police report should be considered hearsay within hearsay and therefore must also be subject to an independent hearsay exception to be admissible under Fed. R. Evid. 805. Therefore Defendants will be permitted to offer the police report redacted to exclude any hearsay included within the report. Accordingly, any potential testimony by Defendant Albert and Officer Hart regarding the police report may not include any hearsay.

Plaintiffs' objection to the testimony of Joseph Marfuggi and Lieutenant Bergenholtz is overruled. Although Defendants concede that these individuals were not formally disclosed pursuant to Fed. R. Civ. P. 26, Defendants have indicated that Plaintiffs have had ample notice that these individuals had relevant information. While Plaintiffs were not notified of the existence of these individuals during the discovery period, Plaintiffs would have had good cause

