

WILLIAM JAMES

Plaintiff

v.

MAYOR AND CITY COUNCIL
OF BALTIMORE

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.: 24-C-19-002784
*

* * * * *

ORDER

Accordingly, it is this 4th day of October, 2019, hereby

ORDERED that Defendant Mayor and City Council of Baltimore Motion for Summary Judgment (docket no. 3) is **DENIED**; and it is further

ORDERED that Plaintiff's Cross Motion for Summary Judgment (docket no. 6) is

GRANTED
TRUE COPY
TEST

Marilyn Bentley
MM 10/4/19

MARILYN BENTLEY, CLERK



Copy of Stipulated Statement of Undisputed Material Facts (docket no. 4)

Copy of letter from parties dated September 20, 2019

Copy of Order from the U.S. District Court for the District of Maryland Certifying Controlling Question of Maryland Law to the Court of Appeals of Maryland in the case of *Potts v. Baltimore City Police Department, et al.*, Case No.: CBD 16-3187.

Notice to Clerk:
Please send copies to all parties.

WILLIAM JAMES

Plaintiff

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*** * * * ***

MEMORANDUM

Pending before this Court is Defendant Mayor and City Council of Baltimore's Motion for Summary Judgment (docket no. 3); Plaintiff's Opposition to Defendant's Motion for Summary Judgment (docket no. 3/2); Defendant's Reply in Support of Motion for Summary Judgment (docket no. 3/3); Plaintiff's Cross Motion for Summary Judgment (docket no. 6); and Defendant's Response in Opposition to Plaintiff's Cross Motion (docket no. 6/2). This Court heard oral arguments on these matters on September 23, 2019.

I. Factual History

This matter arises from William James' ("James") false arrest by members of Baltimore City Police Department's Gun Trace Task Force ("GTTF"). The Estate of Mr. James ("Plaintiff") has brought this suit. The parties have filed a detailed Stipulated Statement of Undisputed Material Facts (docket no. 4), detailing the GTTF's conduct during the course of their conspiracy and three members of the GTTF's specific interaction with James.

On August 18, 2016, co-conspirators Marcus Taylor ("Taylor"), Jemell Rayam ("Rayam"), and Wayne Jenkins ("Jenkins") were on duty. James and his girlfriend were traveling in a vehicle on Hillen Street in Baltimore when two Baltimore police vehicles cut in

front of him, causing him to pull over. The three members of the GTTF were inside the two police vehicles. After cutting James off, Taylor exited one of the police vehicles, approached James's vehicle, and without any reasonable suspicion or probable cause, pulled James out of his car. Taylor advised James that he would release James if he provided the name of a person who possessed guns or drugs. James could not, and did not, provide any such names. Rayam then advised James's girlfriend that James would be going to jail for possession of a gun. James was not in possession of a gun, a weapon, or any illegal substances. *Stipulated Statement of Undisputed Material Facts* ¶ 36.

The co-conspirators then huddled in a circle around their vehicles to converse. When they finished, Jenkins emerged with a gun and stated to James, "This is your gun right here." None of the co-conspirators had searched James's person, James's girlfriend's person, or James's car before Jenkins produced the gun. The gun did not belong to James. *Id.* ¶ 37. The co-conspirators then arrested James, and he was held on no bail. The co-conspirators charged James with six felony counts related to illegal possession of a handgun. *Id.* ¶ 38. On March 24, 2017, after the federal racketeering conspiracy indictment of the co-conspirators became public, the State entered a *nolle prosequi* as to all counts. *Id.* ¶ 39.

As a result of the co-conspirators' false charges, James was imprisoned and held without bail for more than seven months, resulting in the loss of his employment, the loss of time with his six-year-old son, his home going into foreclosure, and substantial other losses. *Id.* ¶ 40. James's false arrest, assault, and fraudulent conviction were not part of the federal indictments and criminal prosecution of the co-conspirators. *Id.* ¶ 42. James filed an action against the co-conspirators, the Defendant City ("Defendant"), and the Baltimore Police Department ("BPD") for damages arising out of these events. On April 8, 2019, James settled his claims against the

co-conspirators by way of a consent judgment in the amount of Thirty-Two Thousand Dollars (\$32,000.00) in full and complete satisfaction of his claims against all co-conspirators.

Thereafter, the co-conspirators assigned to James for good and valuable consideration their right to indemnity as against Defendant under the Local Government Tort Claims Act ("LGTC") and the Baltimore City Lodge #3 of Fraternal Order of Police, Inc. ("FOP")'s Memorandum of Understanding ("MOU"). Defendant acknowledges that the assignment is reasonable, fair and equitable and of full force and effect.

Prior to oral arguments, the parties, together, had entered into an unorthodox settlement arrangement. In a letter, dated September 20, 2019, sent to this Court, the parties informed it that following this Court's ruling on the respective motions, the non-prevailing party, regardless of the ruling by this Court, shall note a timely appeal. Further, the parties will promptly file a joint "bypass petition" for *certiorari* in the Court of Appeals. The parties are hopeful that this case will be able to be consolidated with *Potts v. Baltimore City Police Department*, Case No. CBD 16-3187, which is tentatively scheduled to be argued before the Court of Appeals in January 2020. In *Potts*, a different plaintiff settled with members of the GTTF. The United States District Court for the District of Maryland recently certified a question of state law to the Maryland Court of Appeals which is the same as the one presented to this Court. Copies of the letter, the Order Certifying Controlling Question of Maryland Law to the Court of Appeals of Maryland, and the Stipulated Statement of Undisputed Material Facts are attached to this Order.

II. Standard of Review

According to Md. Rule 2-501(a), "Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Summary judgment is

appropriate when, “the facts are conceded, undisputed, or uncontroverted, and the inferences to be drawn therefrom are plain, definite and undisputed . . . their legal significance is a matter of law to be determined by the court, but where the facts or inferences therefrom, or both are in dispute, such questions are to be determined by a jury.” *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

“A material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Lippert v. Jung*, 366 Md. 221, 227 (2001) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)). “The facts properly before the court, and any reasonable inferences that may be drawn from them will be construed in the light most favorable to the non-moving party.” *de la Puente v. Cnty. Comm’rs of Frederick Cnty.*, 386 Md. 505, 510 (2005) (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579–80 (2003)). In Maryland, motions for summary judgment can be defeated only if, “the opposing party [shows] that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence.” *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 738 (1993).

III. Law and Arguments

Before this Court is a very narrow legal question. Defendant conceded that the officers’ conduct included intentional torts. Therefore, the parties agree that if the officers’ conduct was within the scope of their employment for the BPD, then Defendant has an obligation to pay the judgment under both the LGTCA and the MOU. Thus, this Court will only consider the issue of whether the officers’ conduct was within the scope of their employment. Each party relied extensively on appellate precedent. Thus, this Court finds that it will be useful to its analysis to fully set forth, in addition to the *Sawyer* factors, the arguments of the parties and the circumstances and holding of each of those cases.

a. General Test for Whether Conduct is Within the Scope of Employment

Under the LGTCA, the “lynchpin of the local government’s liability” is “whether the employee acts within the scope of employment.” *Espina v. Jackson*, 442 Md. 311, 346 (2015). The Court noted that whether the employee acted with malice is irrelevant to this analysis. “If the employee acts with malice, *the employee is also liable.*” *Id.* at 347.

The “simple test” is whether the employee’s acts were done “in furtherance” of the employer’s business and whether it “may fairly be said to have been authorized by” the employer. *Hopkins C. Co. v. Read Drug & C. Co.*, 124 Md. 210, 214 (1914). Authority does not mean only authority expressly conferred, but whether “the act was such as was incident to the performance of the duties entrusted to him by the master, even though in opposition to his express and positive orders.” *Id.* To determine scope of employment, courts must find that “the conduct must be of the kind the servant is employed to perform and must occur during a period not unreasonably disconnected from the authorized period of employment in a locality not unreasonably distant from the authorized area, and actuated at least in part by a purpose to serve the master.” *Sawyer v. Humphries*, 322 Md. 247, 255 (1991) (citing *E. Coast Lines v. M. & C.C. of Balto.*, 190 Md. 256, 285 (1948)).

Certain conduct done by the employee may be within the scope of employment, “although not intended or consciously authorized by the master, but

(1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized. (2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:—(a) whether or not the act is one commonly done by such servants; (b) the time, place and purpose of the act; (c) the previous relations between the master and the servant; (d) the extent to which the business of the master is apportioned between different servants; (e) whether the act is outside the enterprise of the master or, if within the enterprise, has not been

entrusted to any servant; (f) whether or not the master has reason to expect that such an act will be done; (g) the similarity in quality of the act done to the act authorized; (h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant; (i) the extent of departure from the normal method of accomplishing an authorized result, and (j) whether or not the act is seriously criminal.

Id. at 256 (quoting *Great A. & P. Tea Co. v. Noppenberger*, 171 Md. 378, 390–91 (1937)).

However, when the employee's actions are "personal or where they represent a departure from the purpose of furthering the employer's business or where the employee is acting to protect his own interests, even if during normal duty hours and at an authorized locality, the employee's actions are outside the scope of his employment." *Id.* at 256–57. Finally, whether an officer is on-duty is "highly relevant," though not dispositive" to the scope of employment inquiry. *Prince George's County v. Morales*, 230 Ms. App. 699 (2016).

b. Plaintiff's Argument

Plaintiff argues that the officers were acting within the scope of their employment for BPD when they stopped, arrested, and charged James with six felony counts on August 18, 2016. Plaintiffs contend that Defendant is, in their own Motion, seeking a sweeping ruling precluding recovery by any plaintiff whose damages arise out of an encounter with any GTTF member, simply by virtue of the indictments and subsequent convictions. Conversely, Plaintiff requests the Court analyze the facts of each case individually, as intended by the appellate courts.

Plaintiff asserts that, in this case, James' interactions with the three GTTF members was not about a vast criminal enterprise, as argued by Defendant, but a singular false arrest by officers driving BPD owned vehicles, carrying BPD issued weapons, and using law enforcement tools and procedures to arrest, book, and charge a man with crimes he did not commit. Plaintiff argues that there is no evidence to support the allegation that the officers were acting in furtherance of their own criminal conspiracy when they arrested James. Defendant's contentions

that the officers had a “hunch” or “guess” that James had contraband on him or that he might have been allowed to “purchase” his freedom as citizen “A.F.” was allowed to shortly following this encounter are only speculation not supported by evidence in the record. Plaintiff instead asserts that James’ arrest was actuated, at least in part, by a purpose to serve the BPD and the arrest was entirely foreseeable. Plaintiff relied on two cases to support his arguments: *Houghton v. Forrest*, 412 Md. 578 (2010) and *Prince George’s County v. Morales*, 230 Md. App. 699 (2016).

i. *Houghton v. Forrest*

In *Houghton v. Forrest*, the Court of Appeals considered whether an officer was acting within the scope of his employment when he ordered the arrest of a woman who was misidentified. Houghton, the police officer, had observed a drug sale through a security camera feed. Three individuals participated in the sale: the drug dealer, a male purchaser, and an alleged female purchaser who was wearing a white shirt or coat. *Id.* at 583. Houghton ordered the arrest of the participants, but the alleged female purchaser left the scene. Houghton then observed, through the video feed, the alleged female purchaser embrace a second woman nearby. Houghton assumed the embrace concealed the transfer of drugs to the second woman. The second woman was wearing a black jacket, dark jeans, and carrying a red umbrella. Houghton then lost sight of the second woman. When Houghton scanned the area for the female purchaser and the second woman, he saw a woman he believed to be the second woman. This person, Forrest, was standing at a nearby bus stop. She was wearing different colored pants and jacket than the second woman, but both were carrying red umbrellas. Houghton instructed another officer to arrest Forrest. Forrest then consented to a search of her person, which revealed no contraband. Houghton then instructed the officer to arrest Forrest. The officer suggested that

Houghton review the video footage to make certain that Forrest was indeed the second woman, but Houghton did not do so and confirmed that Forrest was to be arrested. The charges against Forrest were eventually dismissed. *Id.* at 583–84.

Forrest filed suit against Houghton and the other officer. A jury found that Houghton had acted with malice, and thus immunity did not apply, and Houghton was liable for the intentional torts of battery, false arrest and false imprisonment, as well as violations of Articles 24 and 26 of the Maryland Declaration of Rights. A jury awarded \$171.60 in actual damages, \$180,000.00 in compensatory damages, and no punitive damages. *Id.* at 584. Houghton then appealed the verdict arguing that there was insufficient evidence of malice, and he should be immune. The Court of Special Appeals held (1) that common law public official immunity does not apply to intentional torts, and there are no other applicable bases for immunity and (2) the evidence at trial was insufficient to support a finding of malice. The Court noted that the second holding would not pose a bar to Forrest's recovery, as the LGTCA allows Forrest to enforce her claim against the BPD. *Id.* Houghton appealed the first holding and Forrest cross-appealed on the second.

When considering Forrest's cross-appeal on the second holding, the Court of Appeals held that it did not need to reach the malice issue. The Court of Appeals clarified the proper analysis for the LGTCA. The Court reiterated that "the test for determining whether acts were within the scope of employment is whether the challenged acts were in furtherance of the employer's business and could be fairly termed 'incident to the performance of duties entrusted to' the employee." *Id.* at 592. The Court held that "surely [is it] the case here, as Houghton's arrest of Forrest was incident to his general authority as a police officer." *Id.* Further, the Court clarified that the issue of malice is immaterial to this analysis. Whether the officer acted with malice would be relevant if BPD later sought indemnification from the officer himself, but it

does not affect BPD's liability to the plaintiff under the LGTCA. *Id.* Therefore, the Court found that Houghton's actions were within the scope of his employment. The LGTCA thus ensures that BPD is liable for the judgment against Houghton. *Id.* at 592.

ii. *Prince George's County v. Morales*

In *Prince George's County v. Morales*, 230 Md. App. 699 (2016), the Court of Special Appeals similarly considered whether an officer's conduct was within the scope of his employment for the Prince George's Police Department ("PGPD"). In *Morales*, Officer Richardson was working off-duty security at a college warehouse party. Richardson recruited several other officers and an acquaintance to help provide security. *Id.* at 703. During this time, Richardson was working off-duty in violation of the County's written policy. *Id.* at 746. Richardson drove his personal vehicle, other officers arrived in marked police cruisers. Richardson wore his gunbelt and service firearm, handcuffs, his police badge on a chain around his neck, a shirt with "PGPD" lettering, a ballistic vest, and other gear issued by PGPD. *Id.* at 703. During the night, Richardson instructed other officers to activate their cruiser lights and sirens for crowd control. Originally, Richardson created separate lines for fraternity members, those with advance tickets, and those who wished to purchase tickets at the door. Steven Morales arrived at the party after a large crowd had gathered outside the warehouse and there were no longer any lines. Morales saw security people wearing purple shirts and PGPD police officers wearing badges. *Id.* Morales waited outside for forty-five minutes, gradually moving toward the entrance. While he waited, police cruisers intermittently sounded their sirens. *Id.* at 703–04.

When Morales reached the front of the warehouse, he encountered Richardson. Morales held his advance ticket up and twice asked Richardson for help. The first time, "Richardson told him 'to get back in line[.]' even though 'there wasn't any line' and Morales 'was stuck with

everybody' at the bottom of the steps." *Id.* at 704. The second time, "Officer Richardson struck me without me doing anything to him." Morales testified that he was in a chokehold for approximately ten seconds. When Richardson released Morales, another PGPD officer "picked him up and put him against a police cruiser that was 'right next to' him, causing Morales to believe that he was 'getting arrested or detained.'" *Id.* at 705. Richardson confirmed that he punched Morales in the face, pinned him to the ground, and used a police-trained restraint technique against Morales. However, he testified that Morales "pushed him in an attempt to get past him into the warehouse." *Id.* at 706. Further, Richardson testified that Morales was a "threat" to him because he took several swipes at Richardson. *Id.*

Prior to trial, the County moved to dismiss the claim or, in the alternative, for summary judgment, arguing that, as a matter of law, Richardson's conduct was not within the scope of his employment; the circuit court denied the motion. After the parties completed discovery, the County again moved for summary judgment. The motion was granted prior to Morales filing an opposition. When Morales filed and moved for reconsideration, another judge reconsidered the ruling and denied summary judgment. *Id.* at 710. The case proceeded to a jury trial, and following Morales' case-in-chief, the County moved for judgment on the remaining claims against it, again for failure to provide sufficient evidence that Richardson was acting within the scope of his employment. The court denied the motion. When the County renewed its motion at the end of its case, the court again denied the motion. A jury then found that "Richardson battered Morales and used excessive force while acting within the scope of his employment with the County." *Id.* The County, having been held liable as Richardson's employer, moved for a judgment notwithstanding the verdict, reasserting its argument that Richardson was not acting

within the scope of his employment. The court denied its motion and entered judgment against Richardson and the County. The County then appealed to the Court of Special Appeals.

When considering scope of employment principles and precedent, the Court of Special Appeals considered its previous discussion in *Clark v. Prince George's County*, 211 Md. App. 548 (2013), discussed *supra* Part III.c.ii. The Court reiterated that “[w]hen an employee’s actions are personal, or where they represent a departure from the purpose of furthering the employer’s business, or where the employee is acting to protect his own interests, even if during normal duty hours and at an authorized locality, the employee’s actions are outside the scope of his employment.” *Id.* at 715 (quoting *Sawyer*, 322 Md. at 256–57). Further, the Court found that an officer’s on-duty status is “highly relevant, it is not dispositive of the scope of employment question.” *Id.* at 716. (comparing *Wolfe v. Anne Arundel County*, 374 Md. 20 (2003) (discussed *supra* Part III.c.i) with *Cox v. Prince George's County*, 296 Md. 162, 164–65 (1983) (scope of employment could not be decided on a motion to dismiss when the complaint alleged assault and excessive force by on-duty officers in the course of using a police dog to make an arrest)).

In *Morales*, the Court of Special Appeals compared the spectrum of when a police officer’s conduct is within the scope of employment. On one end is *Brown v. Baltimore City*, 167 Md. App. 306, 326 (2006), where an off-duty police officer was found acting not within the scope of his employment when he “allegedly shot victim 17 times in belief that he was having an affair with officer’s wife.” On the opposite end of the spectrum is where an officer’s conduct “unquestionably qualifies as police action,” such as when the Court of Special Appeals held that an off-duty officer in his personal vehicle was engaged in governmental activity under his law enforcement authority when he fired at a suspected hit and run driver during a high-speed pursuit. *Town of Port Deposit v. Petetit*, 113 Md. App. 401, 420 (1997).

Prior to considering the *Sawyer* factors, the Court rejected the County's argument that Richardson's use of excessive force was outside the scope of his employment as a matter of law "because such conduct was neither expectable nor foreseeable given that Richardson was prohibited from working extra-duty employment due to his light-duty status." *Morales*, 230 Md. App. at 722–23. The Court declined to hold that the violation made his conduct so unexpected and unforeseeable that he was acting outside the scope of law as a matter of law. Instead, the Court found it was a factor to consider. *Id.* at 727.

Finally, when considering the *Sawyer* factors, the Court noted that Richardson, who was wearing his PGPD badge and positioned next to a marked police cruiser, was identifiable as a police officer "in a position of authority" Further, throughout the event, Richardson used "tools of the trade," such as "his police training, authority, and fellow officers to provide crowd management services." *Id.* at 729, 732. Thus, the Court found that "there was evidence that Richardson's conduct was 'the kind' he was 'employed to perform' for the PGPD, that it 'occur[red] during a period not unreasonably disconnected from the authorized period of employment,' 'in a locality' where he was authorized to take police action, and that it was 'actuated at least in part by a purpose to serve' the County." *Id.* at 729. The Court held that this was sufficient for the jury to find by a preponderance of the evidence that Richardson's altercation with Morales was within the scope of his PGPD employment. *Id.*

c. Defendant's Argument

Conversely, Defendant argues that the officers' "willful prosecution of Mr. James on false charges and fabricated evidence was conduct on their part that occurred during, and in furtherance of, the criminal conspiracy" for which the officers plead or were found guilty. The officers were convicted of, or pled guilty to, racketeering and racketeering conspiracy under the

Racketeer Influenced Corrupt Organizations Act (“RICO”) and Hobbs Act Robbery. Defendant characterizes the officers’ conduct from at least 2014 until their arrests in early 2017 as a “far-reaching and outrageous plot to terrorize citizens of Baltimore City for their own financial gain.” Further, Defendant states, “In short, they were lousy police officers but accomplished mobsters.”

Defendant extensively details the RICO statute and Hobbs Act to argue that such outrageous conspiratorial conduct could never be found to within the scope of employment. Defendant contends that “[a]lthough the Officers’ crimes against Mr. James were not made a specific element or feature of their plea deals or the verdict against them, by operation of the [RICO statutes and Hobbs Act], and frankly by virtue of plain commonsense, it is undeniable that the crimes the Officers committed against Mr. James were part of that conspiracy.” Defendant argues that their conduct, including false arrest such as James’, “violat[ed] the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud.” *Stipulation*, ¶ 21. The parties further stipulated that “the offenses to which the co-conspirators pled guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct” and that the “underlying actions comprising the criminal acts described in the indictments and plea agreements failed to serve any legitimate purpose of the City’s or BPD’s business” *Id.* ¶¶ 22, 26. Finally, the parties stipulated that “[t]he actions of the co-conspirators were performed during and in furtherance of their outrageous criminal conspiracy and in pursuit of their own pecuniary self-interests” and that they “purposefully and regularly deviated from the legitimate law enforcement aims of the BPD’s mission in order to enrich themselves” *Stipulation*, ¶¶ 29–30.

Defendant relies on several cases to support their argument; primarily, it relies on *Wolfe v. Anne Arundel County* and *Clark v. Prince George's County*. In *Wolfe*, 374 Md. 20 (2003), the Court of Appeals found that an on-duty police officer was outside the scope of employment when he raped a driver whom he had pulled over for a traffic stop. *Id.* at 34. Defendant states that the Court rejected Wolfe's argument that "the traffic stop was within the scope of his employment, and the tort suit constituted 'litigation arising out of' that traffic stop" *Id.* at 31–32. The Court found that "[t]he litigation arose out of the 'act' of raping Ms. Wolfe and not out of the 'act' of the traffic stop." *Id.* at 36. The Court further stated the rape "was neither authorized nor permitted . . . [I]t was criminal." *Id.* Defendant argues that this case is "indistinguishable from *Wolfe*." See *supra* Part III.c.i for a full discussion of the Court's analysis in *Wolfe*.

Additionally, Defendant relies on *Clark v. Prince George's County*, 211 Md. App. 548 (2013). In *Clark*, an off-duty officer used his service weapon to shoot two furniture deliverymen after an altercation inside the officer's home. *Id.* at 553. The officer claimed that his conduct was within the scope of the employment, but the Court found that it was outside the scope because he was acting to protect himself, his home, and his family. *Id.* at 577. Defendant argues that contrary to *Clark*, in this case, the officers have freely admitted that their actions were personal and not done to further the mission or interests of the BPD. Therefore, Defendant argues, the officers' conduct was outside the scope as a matter of law. See *supra* Part.III.c.ii for a full discussion of *Clark*.

i. *Wolfe v. Anne Arundel County*

In *Wolfe v. Anne Arundel County*, 374 Md. 20 (2003), the Court of Appeals considered whether Anne Arundel County was required under the county's self-insurance and collective

bargaining agreement (CBA) to pay the judgment for an officer who raped a motorist during a traffic stop. On November 15, 1990, at approximately 2:00 a.m., police officer Michael Ziegler stopped Wolfe for suspected driving while intoxicated. Instead of arresting her, Ziegler told Wolfe that he would drive her home. Instead, he drove her to a remote location and allegedly raped Wolfe. He was later convicted of misconduct in office and resigned from the police force. *Id.* at 22–23. Wolfe brought suit against Ziegler, and a jury returned a \$1.15 million verdict in favor of Wolfe for compensatory and punitive damages. The U.S. District Court then granted summary judgment in favor of the police officials and Anne Arundel County holding that the plaintiff had failed to establish a direct claim against those defendants and the indemnification claim was premature. *Id.* at 23. Ziegler then filed a claim for indemnification with the Anne Arundel County Self-Insurance Fund. His claim was denied because it was found to not be within the scope of his employment. *Id.* at 23–24. Wolfe then brought a claim against Anne Arundel County asserting that it was contractually bound to indemnify Zeigler. In regard to the indemnification claim, the Circuit Court granted Anne Arundel County’s motion for summary judgment stating that plaintiff failed to establish that the conduct occurred within the scope of the employment of the servant. Wolfe then appealed to the Court of Special Appeals. The Court affirmed finding that the self-insurance regulations covered only actions “within the scope of employment” and excluded “willful actions” and “punitive damages.” *Id.* at 25–26. Wolfe then appealed to the Court of Appeals.

The Court of Appeals first noted that Anne Arundel County’s self-insurance plan is rooted in several enactments, primarily in the LGTCA. Next, the Court found that “Wolfe concedes ‘that the scope of an officer’s employment does not encompass the rape of a citizen’” and that the LGTCA did not require the County to pay the judgment. Further, “Wolfe insists that

the Court of Special Appeals 'clearly erred' in mentioning the [LGTCA] as one of the 'source[s]' of the Anne Arundel County self-insurance program." *Id.* at 30. Instead, "Wolfe's argument is that the Anne Arundel County self-insurance program covered certain actions of an employee outside the scope of employment." *Id.* The relevant portion of the CBA states "[i]ndemnification of compensatory damages will also be provided to any member of the unit who is made a defendant in litigation arising out of the acts within the scope of his/her employment." Wolfe argued that "the traffic stop was an act by Ziegler within the scope of his employment, and the tort suit constituted 'litigation arising out of' that traffic stop within the meaning of the above-quoted language in the collective bargaining agreement." *Id.* at 31. Thus, the focus of this portion of the Court's analysis was what causation was required by the language of the CBA, not whether the conduct was within the scope of employment.

Wolfe supported her argument by claiming the litigation arose out of the traffic stop with a "but for" causation test. She argued that "'but for' Ziegler's position as a police officer making the traffic stop, the rape and battery would not have occurred." *Id.* The Court, however, found that the self-insurance language only intended to cover employees while they were acting within the scope of their employment. While the Court agreed that the language required a causal relationship, it found that it was "between the litigation and certain specified acts, namely 'acts within the scope of Ziegler's employment.' The litigation arose out of the 'act' of raping Ms. Wolfe and not out of the 'act' of the traffic stop." *Id.* at 36. Therefore, the Court found that the litigation was not causally related to conduct within the scope of his employment, and the County was not required to indemnify Zeigler.

ii. *Clark v. Prince George's County*

In *Clark v. Prince George's County*, 211 Md. App. 548 (2013), the Court of Special Appeals again considered whether an officer's conduct fell within the scope of his employment. On January 24, 2007, Keith Washington, a member of the Department of Homeland Security of the Prince George's County Police Department, used his service weapon to shoot two delivery men, Brandon Clark and Robert White. Clark died at the scene and White sustained permanent physical injuries. White and the Estate of Clark then filed a claim against the County alleging direct common law tort claims, vicarious liability, and a Maryland constitutional tort claim against the County. The Circuit Court granted judgment at the conclusion of the men's case-in-chief in favor of the County on the issue of vicarious liability finding that Washington was not acting within the scope of his employment when he shot White and Clark. *Id.* at 553–54.

On the day in question Clark and White were to deliver replacement bed rails to Washington's home, set them up, and remove the defective rails. Washington had taken part of the day off from work to receive the delivery. At the time, Washington acted as the Deputy Chief Administrator of his office and did not function in a police role. *Id.* at 555. Clark and White arrived late to Washington's home. Washington accompanied them to the master bedroom; neither Clark nor White had known that Washington was a police officer. During trial, Washington testified about what occurred between the men. *Id.* at 562. On cross-examination, Washington stated that he told Clark to leave the new bed rails in the foyer, but Clark said he would take them upstairs. Washington led Clark and White to the master bedroom on the second floor. Clark set the bed rails down in the bedroom, but White was not in the room. Washington then heard "rustling" coming from his daughter's bedroom. *Id.* at 563. After asking twice where White was, he stuck his head out of Washington's daughter's bedroom. Washington then told

them to leave three or four times. Washington walked toward White, but he did not move. Clark then walked behind Washington as told him "you need to watch out how you talk to people." White then "sucker punches" Washington in the side of the head. Clark also hits Washington in the back of the head. *Id.* at 563–65.

A physical fight then broke out, and Washington ducked to cover his head while both men tried to beat him. Washington was wearing his handgun, but was not wearing a police uniform, did not have a police car at his home, and never told the men he was an officer. *Id.* at 565. "When asked why he fired his gun, Washington testified: 'I did that to save my life, to protect myself from being beat up in my own home, or possibly severely injured or killed, and two strange men in my home with my wife and daughter. I did what any homeowner would do.'" *Id.* at 566. On direct examination, Washington testified that after the shooting, he called 911 and identified himself as a police officer, telling the operator there had been a "department shooting." Next, Washington and the responding officers followed the procedure for a department shooting. *Id.* Further, he testified that "he was acting accordance with 'General Orders' under which police officers may use force in self-defense or defense of others." *Id.* at 567.

When applying the factors, the Court noted that Washington was clearly off-duty. *Id.* at 578. He was not required to carry his service weapon on his person while in his home. "Shooting people in one's home is not the same type of conduct that police are authorized by the County to engage in. Nor is shooting delivery people in one's home 'commonly done' by police officers." Further, Washington had been assigned to a desk job for several years "in which he did not patrol the streets, carry out arrests, confront people engaged in dangerous or criminal activities, serve warrants, or the like." *Id.* Finally, the Court noted, "perhaps most importantly," that Washington's motives were not to serve the police department but to protect himself and his

family. *Id.* Therefore, the trial court properly granted the motion in favor of the County. *Id.* at 579.

IV. Discussion

a. Scope of analysis

As a preliminary discussion, the Court must determine what conduct it will consider for this analysis. Defendant argues that the Court must consider the officers' interaction with James as part of the greater criminal enterprise. Thus, the Defendant requests that the Court consider all of the officers' conduct from 2014 until 2017. Conversely, Plaintiff requests that the Court consider only the events that occurred on August 18, 2016. Plaintiff further argued that this case was not part of the indictments and criminal prosecution of the co-conspirators where the officers admitted or were found to have robbed individuals, kept their property for personal gain, and falsely arrested citizens. The factual bases for the guilty pleas and/or guilty verdicts of the co-conspirators involved other victims. *Stipulation*, ¶ 42. Plaintiff was not interviewed by federal officials, nor was he called as a witness at the joint trial of co-conspirators Hersl and Taylor. *Id.* ¶ 43.

This Court finds that it must determine whether the officers' conduct was within the scope of their employment for BPD on a "case-by-case basis." Due to the fact specific nature of the scope of employment analysis, the Court is unable to make a sweeping determination, for either the victims of the GTTF or the BPD, as to the officers' scope of employment. This is especially true as to the case of James, whose interactions with the GTTF officers were not included in their indictments, subsequent pleas or trials, nor were they indicated in any stipulation of fact, pre-sentence report, or other document relating to the co-conspirators' federal prosecution. *Stipulation* ¶ 43. In the twenty-eight additional incidents cited in the Stipulated

Agreement of Undisputed Facts, the GTTF officers monetarily benefited from twenty-seven of them. The October 3, 2016 incident with citizen G.H. does not indicate that the officers involved, Jenkins, Rayam, Gondo, Taylor, Hendrix, and Ward, monetarily benefited from the incident. However, Jenkins recovered nine ounces of cocaine that was thrown out of G.H.'s window during a high-speed pursuit. The Stipulation does not indicate what the officers did with the drugs, only that they were not submitted into evidence with BPD. *Stipulation* ¶ 49–54. In this case, the officers did not attempt to steal any money or contraband from James. Thus, there is no evidence that James' false arrest was part of the greater criminal conspiracy.

Thus, this Court's holding in this case does not provide any indication as to whether the officers were acting within the scope of the employment during the twenty-eight other incidents detailed in the Stipulated Agreement of Undisputed Facts, where the parties agreed that "the offenses to which the co-conspirators pled guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct," and that the "underlying actions comprising the criminal acts described in the indictments and plea agreements failed to serve any legitimate purpose of the City's or BPD's business"

Stipulation ¶¶ 22, 26. Conversely, if this case was one of the twenty-eight other incidents, the Court's analysis would be vastly different than in James' case. Additionally, the Court does not find that the mere fact that an individual's encounter was not included in the federal prosecution is dispositive of whether the encounter was part of the conspiracy nor whether the officers were acting within the scope. The Court only finds that in this case, the encounter must be viewed separately from the criminal conspiracy.

b. Analysis of James' false arrest

While the issue of scope of employment is ordinarily for the jury, when there is no genuine issue as to material fact, the Court may determine the bounds of the scope as a matter of law. See *Johnson v. Francis*, 239 Md. App. 530, 556 (2018) (stating that the Court can determine scope of employment as a matter of law based on undisputed facts in the record or based on a stipulation); *Morales*, 230 Md. App. at 716. In this case, the parties' Stipulation allows the Court to determine whether the officers were acting within the scope of their employment as a matter of law.

While the Court has stated the "simple test" to determine whether an employee's acts were within the scope is if they were done "in furtherance" of the employer's business and if it "may fairly be said to have been authorized by" the employer, there are many factors for courts to consider. To determine scope of employment, courts must find that "the conduct must be of the kind the servant is employed to perform and must occur during a period not unreasonably disconnected from the authorized period of employment in a locality not unreasonably distant from the authorized area, and actuated at least in part by a purpose to serve the master." *Sawyer v. Humphries*, 322 Md. 247, 255 (1991) (citing *E. Coast Lines v. M. & C.C. of Balto*, 190 Md. 256, 285 (1948)). Thus, this Court will consider the relevant factors in turn.

First, courts must consider the period in which the conduct occurred. The Court of Special Appeals in *Morales* stated that an officer's duty status is "highly relevant" to the inquiry, but it is not dispositive. This is illustrated by *Wolfe* and *Richardson*. In *Wolfe*, an on-duty officer was found to be acting outside the scope of his employment. 374 Md. at 22. Conversely, in *Richardson*, an off-duty officer working extra-duty as security was found to be acting within the scope of his employment. 230 Md. at 746. Thus, the fact that the GTTF officers in this case were

on-duty at the time of James' false arrest is not dispositive. However, it does show that the altercation occurred during a period not unreasonably disconnected from the authorized period of employment. While it lends some credit to the Plaintiff's arguments, the Court will not give it undue weight.

The appellate case law illustrates that an additional important factor is whether the officers were identifiable as police officers and whether they were using the "tools of the trade" during the incident. In *Morales*, the Court of Special Appeals highlighted that though Richardson was off-duty, he was wearing portions of his service uniform, marked police vehicles were present, and Morales identified him as a police officer. 230 Md. App. at 746. The Court found that his conduct was within the scope partially because he was using the "tools of the trade" at the time of the incident. *Id.* at 729, 732. Further, in *Clark*, the Court again noted that the victims were unaware that Clark, who was off-duty, was a police member and he did not identify himself as such during the altercation. 211 Md. App. at 578–79. The Court said, "Washington did not identify himself to Clark and White as a police officer while the fracas he claims happened was going on. If during the fracas, Washington had been acting as a police officer, to protect the peace and the safety of the public, he would have identified himself as an officer either immediately before or when the fight broke out, to gain control of the situation." *Id.*

In this case, the GTTF were on-duty officers who were using the "tools of the trade." Like Richardson, the officers had marked police vehicles, were wearing their service weapons, and were wearing other identifiable police issued equipment. Additionally, unlike Clark, they did identify themselves as police officers. James necessarily had to identify them as police officers. Thus, the officers were on-duty, identifiable as police officers, and used the tools of the trade when interacting with James.

Second, the Court must consider the officers' conduct and whether it was the kind the officers were employed and authorized to perform. In *Houghton*, the Court of Appeals held that the officer's false arrest was incidental to his "general authority as a police officer." 412 Md. at 592. Defendant attempts to distinguish this case from *Houghton* by arguing that although Houghton's actions were wrongful and unreasonable, he suspected Forrest of committing criminal activity. Defendant argues that the GTTF officers here did not have any belief that James was committing illegal activity and thus the conduct was not within their general authority. However, when considering the facts of *Houghton*, this argument is unpersuasive. Houghton was warned by a fellow officer that he should review the video prior to arresting Forrest to ensure she was the correct person. Houghton refused and ordered her arrested anyway. In *Houghton* and in this case, officers falsely arrested innocent individuals. Additionally, whether the GTTF officers were acting maliciously is irrelevant for this analysis. See *Houghton*, 412 Md. at 592. Rather, the Court must consider whether the act was the type generally authorized by the employer. Police departments never explicitly authorize officers to falsely arrest citizens. However, they may be liable if an officer uses their granted authority to make arrests to falsely arrest an individual.

Additionally, Defendant argued the Court of Appeals found in *Wolfe* that the litigation arose out of the act of rape, not the traffic stop. Similarly, Defendant argues that in this case, the litigation arose from the officers' criminal conduct. However, the Defendant mischaracterizes the Court's analysis. The plaintiff in *Wolfe* conceded outright that the rape was outside the scope of employment. *Wolfe*, 374 Md. at 30. Instead, Wolfe argued that the County was liable because the collective bargaining agreement (CBA) required the County to indemnify officers for actions arising from within the scope, therefore it would cover some conduct that was outside the scope

such as the rape. *Id.* The Court found that the conduct at issue in the underlying litigation was the rape, not the traffic stop. Thus, the Court held that the County was not liable because the agreement only required it to cover employees for their actions within the scope of employment. Therefore, the issue in *Wolfe* was the causation requirement under the CBA, not whether the act was within the scope itself. Conversely, here the underlying judgment arises from the false arrest. Thus, the issue before this Court is not causation, but whether the false arrest itself was within the scope of employment.

Defendant then argued at oral arguments that this case is indistinguishable from *Wolfe* because the officers in each carried out “predatory” behavior. However, the Court cannot agree that the acts of rape and false arrest are indistinguishable. In *Wolfe*, the officer was acting far beyond the bounds of his authorized conduct. However, in this case, the GTTF officers were authorized to arrest individuals, though only with probable cause. Therefore, there is a significant difference between the conduct in *Wolfe* and the GTTF officers’ actions.

When considering the GTTF officers’ conduct during James’ altercation, the Court finds that it was of the type the officers were employed and authorized to perform. Though Defendant attempts to characterize the conduct as “domestic terrorism,” the underlying judgment was for intentional torts including false arrest. As stated in *Houghton*, the power to arrest citizens is incidental to officers’ general authority as a police officer. While the officers did not have the required probable cause to arrest James, that does not *per se* push the conduct outside the scope of their employment. Such a ruling would defeat the legislative purpose of the LGTCA, which holds local governments liable for their employees’ wrong and tortious conduct while acting within the scope of employment. Additionally, authority is not limited to only authority expressly conferred, but extends to acts which were “incident to the performance of the duties

entrusted to him by the master, even though in opposition to his express and positive orders.”

Hopkins C. Co. v. Read Drug & C. Co., 124 Md. 210, 214 (1914). Finally, whether the officers acted maliciously is immaterial to this analysis. See *Espina v. Jackson*, 442 Md. 311, 346–47 (2015); *Houghton*, 412 Md. at 592. Thus, regardless of whether the officers’ acted maliciously when arresting James, they were employed and authorized to arrest individuals.

Third, the Court must determine the purpose of the officers’ conduct; whether it was in “furtherance” of the employer’s business and whether it was actuated, at least in part, by a purpose to serve the master. Defendant argues that the GTTF officers’ purpose was similar to Clark’s. Clark testified that he acted “as any homeowner would do.” *Clark*, 211 Md. App. at 566. If the conduct was personal or were for the officer’s own interest, then the conduct would fall outside the scope of employment, even if the officer was on duty. *Sawyer v. Humphries*, 322 Md. 247, 256–57 (1991). Defendant contends that the officers also acted for their personal benefit.

During oral arguments, Defendant stated “Nothing these officers did was for the BPD.”

However, this assertion is not supported by the record. Unlike the twenty-eight other instances, which were included in the federal prosecution and the parties agreed were for the officers’ personal benefit, the officers did not take anything from James. They did not personally profit from their interaction with James. Per the Stipulated Statement of Undisputed Material Facts, the officers’ *modus operandi* was to steal cash and drugs from citizens. If the officers stole the drugs, then they sold them through a third party and retained the profits. *Stipulation* ¶ 44–220.

Defendant contends that if James had any contraband on him during the incident, he too would have been given the opportunity to pay for his freedom. However, there is no evidence to support this speculation.

What is in the records, is the GTTF officers questioning James if he knew anyone who was in possession of guns or drugs. *Id.* ¶ 36. Defendant argues that the parties stipulated that the officers were not acting in furtherance of the BPD's mission during their criminal enterprise. The officers agreed in their plea agreements that they "violat[ed] the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud." *Id.* ¶ 20; *Plea Agreement of Defendant Allers*. However, none of these acts are found in the case of James. The GTTF officers did not receive money or narcotics from James nor did they commit time and attendance fraud. Defendant states the GTTF mission in its Motion for Summary Judgment; "The GTTF was a notorious specialized unit of plainclothes officers whose ostensible functions and purposes were to identify, arrest, and build legitimate, prosecutable cases against violent offenders in Baltimore City, particularly those who used firearms." When considering their conduct with James, the officers were attempting to identify individuals with contraband or firearms. This falls squarely within the mission of the GTTF. While the officers did not act in accordance with law or BPD's policies, this does not mean it was not, at least in part, in furtherance of BPD's mandate to remove guns from the streets of Baltimore City. No conduct which is covered by the LGTCA is lawful or correct. *See Houghton*, 412 Md. at 592 (finding that an officer's wrongful arrest was within the scope).

Fourth, the parties agree that the altercation occurred in a locality not unreasonably distant from the area the officers were authorized to take police action within. The GTTF was authorized to operate within Baltimore City. James was pulled over and arrested on Hillen Street in Baltimore.

Thus, when considering these factors in context of James' altercation with the GTTF officers, the Court finds that the GTTF officers were acting within the scope of their employment.

for BPD when they falsely arrested James on August 18, 2016. The Court finds that the GTTF officers were on-duty, using their BPD issued equipment, and within the area they were authorized to patrol. Further, their "act" was the false arrest of James. Arresting individuals is "the kind" of act the officers were employed to perform for BPD, and as such, arrests are expectable and foreseeable. Additionally, there is insufficient evidence, in the case of James, that the GTTF's were acting for their own personal motivations. Rather, the record supports the finding that the officers were acting, at least in part, by a motivation to fulfil the GTTF mission to find dangerous individuals with weapons.

Thus, the Court finds the conduct was of the kind the GTTF officers were employed to perform and occurred during a period not unreasonably disconnected from the authorized period of employment in a locality not unreasonably distant from the authorized area, and actuated at least in part by a purpose to serve the master. Consequently, the Court finds that the officers were acting within the scope of their employment for BPD at the time of the incident with James, and the City is required to indemnify Plaintiff.

V. Conclusion

For the above stated reasons, the Court finds that there is no genuine issue of material fact, and Plaintiff is entitled to judgment as a matter of law.

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City Council of Baltimore not inconsistent with the provisions of this subtitle; to apprehend and arrest criminals and persons who violate or are lawfully accused of violating such laws and ordinances; to preserve order at public places; to maintain the orderly flow of traffic on public streets and highways; to assist law enforcement agencies of this State, any municipality of the United States in carrying out their respective duties; and to discharge its duties and responsibilities with the dignity and manner which will inspire public confidence and respect.

Code of Public Local Laws of Baltimore City, 16-2(a).

3) Momodu Bondeva Kenton Gondo, Evodio Calles Hendrix, Daniel Thomas Hersl, Wayne Earl Jenkins, Jemell Lamar Rayam, Marcus Roosevelt Taylor, Maurice Kilpartrick Ward, and Thomas Allers (at times hereinafter referred to jointly and severally as "co-conspirators") are former officers of the BPD, members of the so-called Gun Trace Task Force ("GTTF") all of whom were indicted by the Office of the United States Attorney for the District of Maryland for their knowing and willful participation in a wide-ranging, years-long racketeering conspiracy, as described in detail below.

4) As of the filing of the Cross-Motions for Summary Judgment in this case, each of the co-conspirators has pled guilty or was found guilty of his crimes following trial and has been sentenced to incarceration in a federal prison for a term ranging from a low of seven years to a high of twenty-five years.

5) The Baltimore City Lodge #3 of Fraternal Order of Police, Inc. ("FOP") is a nonstock corporation and a labor organization that is the sole authorized collective bargaining representative for rank and file BPD police officers (including sergeants and lieutenants).

6) The Memorandum of Understanding ("MOU") described *infra* at paragraph 8 was negotiated by the FOP on behalf of BPD officers; the co-conspirators remain beneficiaries of such MOU and any predecessor and successor MOU in matters relevant to this case.

7) The indemnification provision of the Local Government Tort Claims Act ("LGTCa"), codified at Md. Code, Courts & Jud. Proc. Art., sec. 5-303(b) provides: "Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government."

8) Both the City and the BPD are deemed "local governments" under the LGTCa but the City alone maintains a "suits and judgments account" for the payment of settlements and judgments arising out of police-involved litigation and, exclusive of the BPD, makes disbursements therefrom on behalf of the BPD.

9) Personnel of the BPD are afforded indemnification under sec. 5-303(b), whereby the City, via its use of the City's General Fund, customarily satisfies judgments up to the statutory cap entered against BPD personnel when same are found to arise out of actions committed within the scope of their employment as provided by the LGTCa.

10) The current labor agreement between the FOP, the City, and the BPD is memorialized via the MOU between the City, the BPD and the Baltimore City Lodge No. 3, Fraternal Order of Police, Inc. Unit I, Fiscal Years 2018-2020.

Article 15 ("Protection Against Liability") of the MOU provides in part:

[L]egal counsel will be provided in any civil case when the plaintiff alleges that an employee should be held liable for acts alleged to be within the scope of his employment and/or his official capacity. The City will provide indemnification to any member of the unit who is made a defendant in litigation arising out of acts with the scope of his/her employment that results in a monetary judgment being rendered against the employee.

11) The allegations in the federal indictments against the co-conspirators (described *infra* in detail) and the additional criminal wrongs not included in the indictments, but as to which the co-conspirators have pled guilty or were found guilty following trial, demonstrate

actions that are at odds and contrary to the customary and normal duties of legitimate law enforcement, including officers of the BPD.

12) No duty of indemnification is imposed under the relevant sections of the LGTCA or the MOU for liability incurred based on acts and conduct that are without the scope of employment of BPD officers.

13) On or about August 24, 2017, the Office of the United States Attorney for the District of Maryland filed a seven-count indictment against co-conspirator Thomas Allers. *See* Copy of Indictment, attached hereto as Exhibit A, and incorporated herein by reference.

14) The indictment charged Allers with knowing and intentional participation in racketeering activity, consisting of multiple acts involving robbery, attempted robbery, conspiracy, extortion, attempted extortion, and authoring false incident reports. *See* Exhibit A, at Paragraphs 8-9.

15) The indictment further stated that the "purposes of the defendant included violating the legitimate purposes of the BPD in order to enrich himself through illegal conduct, including robbery and extortion." *Id.*, at Paragraph 7.

16) Six months prior to the Allers indictment, on or about February 27, 2017, the Office of the United States Attorney for the District of Maryland had filed a two-count indictment against the seven other co-conspirators. *See* Copy of Indictment, attached hereto as Exhibit B, and incorporated herein by reference.

17) That indictment charged these seven co-conspirators with knowing and intentional participation in a vast criminal conspiracy, encompassing willful and intentional criminal activity that included as overt acts during and in furtherance of the conspiracy false arrest, malicious prosecution, assault and battery, robbery and extortion of citizens and visitors to Baltimore City,

deprivations of civil and constitutional rights, time and attendance fraud against the BPD in order to obtain salary and overtime pay for time not actually worked, and other offenses too numerous to name. *See* Exhibit B, at Paragraph 16 (a)-(h). The indictment further stated that the "purposes of the [co-conspirators] included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud." *Id.*, at Paragraph 14.

18) Six of the eight co-conspirators (Allers, Jenkins, Rayam, Gondo, Ward, and Hendrix) pled guilty to the various crimes alleged in the indictments and/or additional crimes not alleged in the indictment, but identified in their written plea agreements with the Office of the United States Attorney.

19) The plea agreements are attached hereto and incorporated into this Stipulated Statement of Undisputed Material Facts by reference as Exhibits C, D, E, F, G and H. (For ease of reference the parties have included and attached an Index of Exhibits.)

20) In his plea agreement, Allers agreed that "[t]he purposes of the Defendant and his co-defendants included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud." *See* Plea Agreement of Defendant Allers, attached hereto as Exhibit C.

21) In their respective plea agreements, Gondo, Hendrix, Jenkins, Rayam, and Ward likewise agreed that "[t]he purposes of [the individual Defendant] and his co-defendants included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud." *See* Exhibits D, E, F, G and H.

22) The offenses to which the co-conspirators pled guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct.

23) Two of the eight co-conspirators (Hersl and Taylor) proceeded to trial on the indictment and were found guilty of various crimes, including racketeering, and Hobbs Act robbery and extortion.

24) The verdict sheet from that joint trial is attached hereto and incorporated into this Stipulation of Undisputed Material Facts by reference as Exhibit I.

25) The crimes of which the co-conspirators were found guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct.

26) The underlying actions comprising the criminal acts described in the indictments and plea agreements failed to serve any legitimate purpose of the City's or BPD's business as a municipal government entity or the principal public safety agency of that government or did so only coincidentally.

27) The underlying actions comprising that criminal activity are not ones recognized, supported, or otherwise authorized by any of BPD's training provided to law enforcement officers.

28) The underlying actions comprising that criminal activity are not ones recognized, supported, or otherwise authorized by any of BPD's policies, standard operating procedures, general orders, or guidelines.

29) The actions of the co-conspirators were performed during and in furtherance of their outrageous criminal conspiracy and in pursuit of their own pecuniary self-interests.

30) The co-conspirators purposefully and willfully and regularly deviated from the legitimate law enforcement aims of the BPD's mission in order to enrich themselves through their illegitimate and illegal conduct.

31) The co-conspirators accomplished this by concealing their illegitimate and illegal conduct from City officials and from their superiors.

32) The co-conspirators would sometimes intentionally avoid attending and would not appear for scheduled court proceedings related to individuals they had falsely arrested so as not to be questioned regarding their illegal activity of extorting and robbing citizens and fabricating evidence against such falsely arrested persons.

33) The co-conspirators conspired with each other and coached each other in order to better lie to internal investigators to cover up and conceal their wrongdoing.

**SPECIFIC AGREED FACTS AS TO THE CO-CONSPIRATORS' ACTIONS IN
RESPECT TO PLAINTIFF WILLIAM JAMES ON AUGUST 18, 2016, DURING AND
IN FURTHERANCE OF THE RACKETEERING CONSPIRACY**

34) Plaintiff's Decedent, William James ("Plaintiff") was a citizen of the United States residing in Baltimore, Maryland.

35) Co-conspirators Marcus Taylor, Jemell Rayam, and Wayne Jenkins were on duty on August 18, 2016. On that date, Plaintiff and his girlfriend were traveling in a vehicle on Hillen Street in Baltimore when two Baltimore police vehicles cut in front of him, causing him to pull over. The three above co-conspirators were inside those two vehicles.

36) At the time that Plaintiff was pulled over, neither Plaintiff nor his girlfriend was committing any traffic infraction or engaged in illegal activity. After cutting off Plaintiff, Taylor exited one of the police vehicles, approached Plaintiff's vehicle, and, without any reasonable suspicion or probable cause, pulled Plaintiff out of his car. Co-conspirator Taylor advised Plaintiff

that he would release Plaintiff if Plaintiff provided the name of a person who possessed guns or drugs. Plaintiff could not, and did not, provide any such names. Co-conspirator Rayam then advised Plaintiff's girlfriend that Plaintiff would be going to jail for possession of a gun. Plaintiff was not in possession of a gun, a weapon, or any illegal substances.

37) The co-conspirators then huddled in a circle around their vehicles to converse. When they finished, Jenkins emerged with a gun and stated to Plaintiff, "This is your gun right here." None of the co-conspirators had searched Plaintiff's person, Plaintiff's wife's person, or Plaintiff's car before Jenkins produced this gun. Indeed, this gun did not belong to Plaintiff.

38) The co-conspirators then arrested Plaintiff and transported him to Baltimore City Central Booking & Intake Center, where he was ordered to be held on no bail. The co-conspirators charged Plaintiff with six felony counts related to illegal possession of a handgun.

39) On March 24, 2017, after the federal racketeering conspiracy indictment of the co-conspirators became public, the State entered a *nolle prosequi* as to all counts.

40) As a result of the co-conspirators' false charges, Plaintiff was imprisoned and held without bail for more than seven months, resulting in the loss of his employment, the loss of time with his six-year-old son, his home going into foreclosure, and substantial other losses.

41) Plaintiff filed an action against the co-conspirators, the City, and the BPD for damages arising out of the events of August 18, 2016. In due course, Plaintiff settled his claims against the co-conspirators by way of a consent judgment in the amount of Thirty-Two Thousand Dollars (\$32,000.00) in full and complete satisfaction of his claims against all co-conspirators. Thereafter, the co-conspirators assigned to Plaintiff for good and valuable consideration their right to indemnity as against the City under the LGTCA and the FOP MOU, which assignment the City acknowledges is reasonable, fair and equitable and of full force and effect. By virtue of the

complaint filed in this action, the Estate of William James has asserted its claim for payment of the judgment against the Mayor and City Council of Baltimore in keeping with the procedures laid down in *Johnson v. Francis*, 239 Md. App. 530 (2018).

42) Plaintiff's false arrest, assault, and fraudulent conviction (i.e., the events of August 18, 2016 and all subsequent matters related thereto) were not part of the indictments and criminal prosecution of the co-conspirators as described supra in Paragraphs 2, 3, and 9 – 33; the factual bases for the guilty pleas and/or guilty verdicts of the co-conspirators involved victims other than Plaintiff.

43) Plaintiff was not interviewed by federal investigators or prosecutors, nor was he called as a witness in the joint trial of co-conspirators Hersl and Taylor; none of the events of August 18, 2016, the day of Plaintiff's arrest or any subsequent incidents involving Plaintiff, were included in any stipulation of fact, plea agreement, pre-sentence report or other document relating to the co-conspirators' federal prosecution.

**SPECIFIC ACTIONS OF THE CO-CONSPIRATORS EXPRESSLY ADMITTED
UNDER OATH IN THE CRIMINAL PROSECUTIONS**

44) The following twenty-eight (28) specific incidents admitted to under oath by the co-conspirators, among many others the precise nature, date of occurrence, and character of which are unknown, demonstrate the co-conspirators' illegal, illegitimate and egregious criminal conduct and craft a vivid picture of the nature and character and duration of the conspiratorial agreement into which all the co-conspirators knowingly and willfully entered and remained through the date of their indictment.

October 5, 2016

45) On October 5, 2016, Rayam and Gondo were involved in an incident with citizens bearing the initials A.A. and T.C.

46) During the incident, Rayam (equipped with a BPD issued firearm) and a third party named Kyle Wells, entered A.A.'s residence, while citizen T.C. was present in the home. Gondo acted as a lookout while Rayam and the third party were inside. Rayam took personal property, U.S. currency in an amount between \$12,000 to \$14,000, and 800 grams of heroin. Rayam took some of the drugs and sold same for profit, and provided Gondo with a share of the profits from same. The co-conspirators never submitted any paper work or otherwise advised BPD of the seizure of the personal property, funds or drugs seized from the location.

47) Rayam and Gondo pled guilty to the criminal activity associated with this incident. See Plea Agreement of Defendant Rayam, attached hereto as Exhibit D; Plea Agreement of Defendant Gondo, attached hereto as Exhibit G.

48) The October 5, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

October 3, 2016

49) On or about October 3, 2016, Jenkins, Rayam, Gondo, Taylor, Hendrix and Ward, were involved in an incident with a citizen bearing initials G.H.

50) The co-conspirators pursued citizen G.H. in a high-speed pursuit. G.H. threw over nine (9) ounces of cocaine out of the window of his vehicle during the pursuit, wherein G.H. eventually crashed his car near Mondawmin Mall, located in Baltimore.

51) Jenkins recovered the cocaine and provided it to Rayam.

52) None of the co-conspirators authored any police reports noting the seizure of the drugs, nor submitted any drugs into evidence with BPD.

53) Rayam pled guilty to the criminal conduct associated with this incident.

See Exhibit D.

54) The October 3, 2016 incident and acts and omissions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

September 7, 2016

55) On or about September 7, 2016, Gondo, Hersl, Rayam, Taylor, and Ward stopped S.S. as he attempted to leave the parking lot of a storage facility in Baltimore City. Taylor told S.S. that they had a warrant to search his storage unit when, in fact, they did not. Hersl, Jenkins and Rayam then went into S.S.'s storage unit and took a sock containing \$4,800 from the unit and took \$2,000 from it. Rayam then gave the sock back to S.S. and told him to leave.

56) Rayam told Gondo that he had to give Jenkins \$100 of the cash stolen from S.S.

57) To conceal the robbery and extortion, Jenkins, Gondo, Hersl, Rayam, Taylor and Ward did not prepare an Incident Report and did not submit to BPD the money stolen from S.S.

58) The September 7, 2016 incident and acts and omissions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.*

August 24, 2016

59) On or about August 24, 2016, Jenkins, Rayam, Gondo, Hersl, and Hendrix were involved in an incident with a citizen bearing the initials A.F.

60) The co-conspirators initiated a traffic stop of citizen A.F. Hendrix stole \$1700 from citizen A.F. during the traffic stop while citizen A.F. was detained.

61) Hendrix later gave a portion of the \$1,700 to Ward.

* Plaintiff's claim is based on events occurring on August 18, 2016, during the conspiracy.

62) None of the co-conspirators submitted any paperwork acknowledging the stop of citizen A.F., nor the taking of any of the funds from citizen A.F.

63) Ward and Hendrix pled guilty to the criminal activity related to this incident. *See* Plea Agreement of Defendant Ward, attached hereto as Exhibit E; Plea Agreement of Defendant Hendrix, attached hereto as Exhibit F.

64) The August 24, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

August 24, 2016

65) On or about August 24, 2016, Rayam, Gondo, and Hersl were involved in an incident with a citizen bearing initials J.B.

66) Rayam, Gondo, and Hersl eventually entered citizen J.B.'s home.

67) While inside the home, Rayam stole \$1,500 from citizen J.B. directly in the presence of Gondo and Hersl.

68) Rayam authored a false police report in relation to the incident and in same failed to disclose the taking of the money.

69) Rayam pled guilty to the criminal activity related to this incident. *See* Exhibit D.

70) The August 24, 2016 incident involving citizen J.B. and actions in respect to same depict action not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

August 8, 2016

71) On or about August 8, 2016, Jenkins, Hersl, Gondo, Rayam, and another BPD officer bearing initials J.C. were involved in an incident with a citizen bearing initials D.A.

72) Jenkins, Hersl, and J.C., observed D.A. leaving a storage facility, and then pursued and arrested D.A. as he was leaving the storage facility.

73) D.A. was taken from the scene, and Jenkins, Hersl, Gondo and Rayam went to D.A.'s storage facility.

74) Gondo and J.C. left the scene to prepare a search warrant for the storage facility.

75) While Jenkins, Hersl and Rayam were waiting for officer J.C. to return with a search warrant, Jenkins called a third party, and told the third party to break into D.A.'s storage unit and steal the contents located in same.

76) The third party then responded and broke into the storage unit and recovered three quarters of a kilogram of cocaine from same.

77) The third party later sold the drugs and provided some of the proceeds to Jenkins.

78) In turn, Jenkins provided some of the proceeds to Hersl.

79) None of the co-conspirators prepared any police reports acknowledging the seizure of any funds or drugs from the location or incident.

80) Jenkins and Rayam pled guilty to the criminal conduct associated with this incident.
See Exhibit D; Plea Agreement of Jenkins, attached hereto as Exhibit H.

81) The August 8, 2016 incident and actions in respect to same depict action not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

July 8, 2016

82) On or about July 8, 2016, Rayam, Jenkins, Gondo, and Hersl, were involved in an incident with citizens bearing initials R.H. and N.H. which eventually lead the co-conspirators to the home of citizens R.H. and N.H.

83) The co-conspirators asked citizen R.H. where he kept his money in his home, and in response citizen R.H. advised them he kept his money in an upstairs bedroom.

84) The co-conspirators stole \$20,000 from citizen R.H.'s home.

85) During the incident, Jenkins told citizen R.H. that if R.H. could provide the name of a drug dealer for the co-conspirators to rob, they would "take care" of citizen R.H. and could perhaps provide narcotics for R.H. to sell.

86) Rayam later authored a false police report detailing the incident related to R.H. and N.H., and in same failed to disclose any of the sums seized from citizens R.H. and N.H.

87) Rayam, Gondo and Jenkins pled guilty to the criminal activity related to this incident. *See Exhibits D, G, and H.*

88) Hersl was found guilty by a jury of participating in the criminal act of the July 8, 2016 incident. *See Verdict Sheet of from the trial of Daniel Hersl and Macrus Taylor, attached hereto as Exhibit I.*

89) The July 8, 2016 incident and actions in respect to same depict action not in furtherance of any recognized mission, training, or policy, standard operating procedure, or guideline of the BPD.

June 24, 2016

90) On or about June 24, 2016, Jenkins, Ward, and Hendrix were involved in executing a search and seizure warrant in the home of a citizen bearing the initials M.M.

91) During this encounter, the co-conspirators were advised by M.M. where he kept sums of money in his home.

92) After the co-conspirators were advised where citizen M.M. kept his money, they sent him away, and stole a total of \$17,000 from citizen M.M.

93) The co-conspirators did not report the seizure of any funds from citizen M.M. to

BPD.

94) Ward and Hendrix pled guilty to their criminal actions relating to this incident. *See Exhibits E and F.*

95) The June 24, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

June 2016

96) In or about June 2016, Jenkins, Gondo and Rayam conducted a car stop of an unknown citizen.

97) Following the car stop of the citizen, the co-conspirators went to the citizen's home and seized a 9mm handgun and a pound of marijuana from the home.

98) Jenkins directed Rayam to sell the handgun and the marijuana in order to pay a debt Rayam owed to Jenkins.

99) Gondo arranged for a third party to buy the handgun and the marijuana.

100) The third party paid Rayam for the handgun and the marijuana, and Rayam provided Gondo with a portion of the proceeds.

101) Rayam and Gondo pled guilty to the criminal conduct associated with this incident. *See Exhibits D and G.*

102) The June 2016 incident and actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

May 28, 2016

103) On or about May 28, 2016, Allers, Gondo, Rayam, and Det. D.H. were involved in an incident with a citizen bearing the initials A.C.

104) Allers, Gondo, and Rayam, while executing a search and seizure warrant stole \$700 of \$1,000 from A.C.'s bedroom and gave D.H. the rest to give to the homeowner, who was A.C.'s grandmother.

105) Allers, Gondo, and Rayam pled guilty to the criminal activity associated with this incident. *See Exhibits C, D, and G.*

106) The May 28, 2016 incident and actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

May 11, 2016

107) On or about May 11, 2016, Gondo, Hersl, and Rayam initiated a traffic stop of citizens bearing the initials N.D. and M.A.

108) During the traffic stop, Rayam stole approximately \$700 from a citizen described as N.D.

109) Gondo, Hersl, and Rayam did not submit the money to BPD for keeping in evidence, and authored false police reports excluding any mention of the stolen money.

110) The co-conspirators, in initiating the traffic stop, stealing the money, and authoring false paperwork, were acting out of their own self-interests in order to further their criminal conspiracy to rob and extort citizens.

111) Rayam pled guilty to this incident. *See Exhibit D.*

112) Gondo and Hersl did not stop Rayam or report his illegal activity to the BPD.

113) In failing to stop Rayam from stealing the funds, or reporting his illegal conduct of same to BPD, Gondo and Hersl were acting solely out of their own self-interests to further and continue their criminal conspiracy to rob and extort citizens.

114) The May 11, 2016 incident and actions in respect to same depicts actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

April 28, 2016

115) On or about April 28, 2016, Allers, Hersl, Gondo, and Rayam arrested D.R.

116) After D.R. was in custody, Allers, Hersl, Gondo, and Rayam went inside the home where D.R. was living and gained consent from L.W. who lived with D.R. and their two children, to search the house.

117) L.W. and D.R. had more than \$10,000 cash in their home at the time of the search.

118) Allers stole over \$10,000 cash during the search.

119) To conceal his illegal conduct, on or about April 28, 2016, Allers approved an incident report, authored by Rayam, which he knew contained false information.

120) Allers pled guilty to the criminal activity associated with this incident. See Exhibit C.

121) The April 28, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

March 22, 2016

122) On or about March 22, 2016, Jenkins, Hendrix, Taylor, and Ward were involved in an incident with a citizen bearing initials O.S.

123) The co-conspirators initiated a traffic stop of O.S. and seized a total of \$21,500 and narcotics from O.S.

124) The co-conspirators submitted only \$15,000, and stole the remaining \$6,500. Hendrix, submitted a false police report to BPD, approved by Jenkins as the supervisor of Hendrix, which falsely stated that only \$15,000 had been recovered from O.S.

125) During the incident, the co-conspirators also took O.S.'s house keys and determined O.S.'s home address by looking at his driver's license.

126) They later entered O.S.'s residence and stole approximately \$200,000, and other property.

127) Jenkins stole at least two (2) kilograms of cocaine from the residence.

128) Jenkins later gave the narcotics to a third-party to sell in order to obtain the profits of the sale of same for himself.

129) The co-conspirators did not author any police reports recognizing the \$200,000 they seized from the premises, nor the narcotics Jenkins seized from the premises.

130) Jenkins, Ward and Hendrix pled guilty to the criminal activity related to this incident. *See Exhibits, E, F and H.*

131) Taylor was proven to have committed the criminal activity associated with this incident at trial. *See Exhibit I.*

132) The March 22, 2016 incident involving citizen O.S. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

March 9, 2016

133) On or about March 9, 2016, Jenkins, Hendrix, Taylor, and Ward were involved in an incident involving a citizen bearing initials M.MC.

134) During the incident, the co-conspirators stole at least \$1,000 from citizen M.MC.

135) Ward authored a false police report and submitted same to BPD, which omitted any mention of the seizure of funds from citizen M.MC.

136) Jenkins signed off on the police report as the supervisor of Ward.

137) The March 9, 2016 incident involving citizen M.MC and the actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

March 2, 2016

138) On or about March 2, 2016, Allers, J.C., Hersl, Gondo, and Rayam executed a search warrant at B.H. and T.A.'s home in Baltimore City.

137) Allers stole more than \$7,000 of the cash that T.A. and B.H. had in their home.

139) To conceal his illegal conduct, on or about March 2, 2016, Allers approved an incident report authored by Hersl, which he knew contained false information.

140) Allers pled guilty to the criminal activity associated with this incident. *See Exhibit C.*

141) The March 2, 2016 incident and the actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

February 23, 2016

142) On February 23, 2016, Rayam, Gondo, and Allers were involved in an incident in Baltimore County with a citizen bearing the initials B.C.

143) Gondo, Rayam, and Allers entered a residence where B.C. had a bedroom and stole \$7,000 from B.C.

144) Gondo authored false paper work and submitted same to BPD, that otherwise omitted that \$7,000 had been seized and taken from the B.C.'s bedroom.

145) To conceal his illegal conduct, Allers approved Gondo's report knowing that it contained false information.

146) Allers, Rayam, and Gondo pled guilty to the criminal activity associated with this incident. *See* Exhibits C, D, and G.

147) The February 23, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

February 17, 2016

148) On or about February 17, 2016 Jenkins, Ward, and Taylor were involved in an incident with a citizen bearing the initials R.B.

149) After chasing citizen R.B. on the street the co-conspirators arrested R.B.

150) Ward and Taylor stole approximately \$500 from R.B.

151) Ward submitted a false police report to BPD, omitting that any funds had been recovered from R.B.

152) Jenkins signed off on the police report as a supervisor.

153) Ward pled guilty to the criminal conduct associated with the incident. *See* Exhibit E.

154) The February 17, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

February 10, 2016

155) On February 10, 2016, Rayam, Gondo, and Allers were involved in an incident with a citizen bearing the initials P.E.

156) Gondo, Rayam, and Allers entered the residence where P.E. was located and stole money that citizen P.E. was counting at the time.

157) Rayam and Gondo pled guilty to the criminal activity associated with this incident.
See Exhibits D and G.

158) To conceal his illegal conduct, on or about February 10, 2016, Allers approved an incident report authored by Rayam that he knew to be false.

159) The February 10, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

February 4, 2016

160) On or about February 4, 2016 Jenkins, Ward, and Hendrix were involved in an incident involving a citizen bearing the initials M.S.

161) The co-conspirators initiated a traffic stop of citizen bearing the initials M.S., and during same seized approximately \$1500 to \$2,000 from citizen M.S.'s vehicle.

162) The co-conspirators did not report to BPD the seizure of the money.

163) Jenkins pled guilty to the criminal activity associated with this incident.

See Exhibit H.

164) The February 4, 2016 incident and actions in respect to same depict not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

November 28, 2015

165) On or about November 28, 2015, Hersl was involved in an incident involving a citizen bearing the initials A.S.

166) During the incident, Hersl stole \$282 from citizen A.S.

167) Hersl submitted a false police report to BPD in association with the incident, reflecting that only \$218 had been seized from citizen A.S. when in fact, a total of \$500 had been recovered from A.S.

168) Hersl was proven to have committed the criminal activity associated with this incident. *See Exhibit L*

169) The November 28, 2015 incident involving citizen A.S. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

November 27, 2015

170) On or about November 27, 2015, Hersl was involved in an incident with a citizen bearing the initials H.T.

171) During the incident, Hersl stole \$312 from citizen H.T.

172) Hersl submitted a false police report to Plaintiff in association with the incident, reflecting that only \$218 had been seized from citizen H.T., when in fact, a total of \$530 had been recovered from H. T.

173) Hersl was proven to have committed the criminal activity associated with this incident. *See Exhibit I.*

174) The November 27, 2015 incident involving citizen H.T. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

July 31, 2015

175) On July 31, 2015 Rayam, Gondo, and Allers, were involved in an incident in Anne Arundel County, Maryland, with a citizen bearing the initials Z.N.

176) During the incident Gondo and Rayam seized U.S. currency from Z.N.'s home.

177) Gondo and Rayam found \$10,000 and stole \$8,900 if it; the remaining cash was recovered by the Anne Arundel County Police Department.

178) The co-conspirators did not author any police reports, or otherwise advise BPD that they seized the funds.

179) After Allers, Gondo, and Rayam left the residence they went to a bar/restaurant in Baltimore City and Rayam gave Allers his share of the stolen cash; Rayam and Gondo split the remainder.

180) Rayam, Gondo, and Allers pled guilty to the criminal activity associated with this incident. See Exhibits C, D, and G.

181) The July 31, 2015 incident and actions in respect to same depict actions not in the furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

April 3, 2015

182) On or about April 3, 2015, Allers, Gondo, Rayam and J.C. entered the residence of D.M. and D.R. in Baltimore City to execute a search warrant.

183) At the time of the search, D.M. and his wife had approximately \$6,000 in their home.

184) During the execution of the search warrant, Gondo located money in a portfolio and gave the money to Rayam.

185) Allers then instructed Gondo and Rayam to "just do this here," or words to that effect, which Gondo and Rayam understood to mean that they should take the money and split it with Allers.

186) Allers, Gondo, and Rayam stole approximately \$5700 from D.M. and D.R.

187) To conceal his illegal conduct, on or about April 3, 2015, Allers approved an incident report, which he knew to be false, authored by J.C. that was filed with the BPD.

188) Allers pled guilty to the criminal activity associated with this incident.

See Exhibit C.

189) The April 3, 2015 incident and actions in respect to same depicts actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

Spring 2015 Robbery at Belvedere Towers

190) In or about the spring of 2015, Jenkins, Taylor, and Ward, interrupted the sale of a large amount of marijuana at the Belvedere Towers apartment building in Baltimore.

191) Jenkins seized a bag containing approximately 30 pounds of marijuana from the would-be seller of the marijuana and a bag of containing approximately \$15,000 in U.S. currency.

192) Jenkins lied to the parties to the drug sale that he was a Drug Enforcement Administration agent, and that he was exercising his discretion to not charge or arrest the parties to the drug sale.

193) Jenkins took Taylor and Ward to a secluded area and gave each of them \$5,000; Jenkins never reported the seizure of the U.S. currency or the drugs to the BPD.

194) Jenkins later provided the drugs to a third party to sell, so he could obtain all of the profits from same.

195) Jenkins pled guilty to the criminal conduct associated with this incident. *See* Exhibit H.

196) The spring 2015 incident at the Belvedere Towers apartments and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

November 5, 2014

197) On or about November 4, 2014, Hersl was involved in an incident with citizen, Jimmie Griffin.

198) It was proven at trial that Hersl committed a robbery of Griffin. *See* Exhibit I.

199) The November 5, 2014 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

October 8, 2014

200) On or about October 8, 2014, Allers, Gondo, Rayam, and J.C. entered a store owned by D.K. in Baltimore City to execute a search warrant.

201) D.K. had approximately \$9,000 in cash in his apartment above the store.

202) Allers stole \$3,000 of the \$9,000; the remaining \$6,000 was recovered by the U.S. Marshals Service.

203) To conceal his illegal conduct, on or about October 8, 2014, Allers approved an incident report authored by J.C., which he knew to be false.

204) Allers pled guilty to the criminal activity associated with this incident. *See* Exhibit C.

205) The October 8, 2014 incident and actions in respect to same depicts not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

July 11, 2014

206) On or about July 11, 2014, Jenkins, Hendrix, and an unknown police officer attempted a traffic stop of a citizen bearing the initials J.C.

207) J.C. fled from the co-conspirators.

208) The co-conspirators went into J.C.'s vehicle and seized between \$12,000 and \$14,000 from J.C.'s vehicle.

209) Jenkins did not report the seizure of funds to the BPD.

210) Jenkins pled guilty to the criminal conduct associated with this incident. *See Exhibit H.*

211) The July 11, 2014 incident involving citizen J.C. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

March 11, 2014

212) On or about March 11, 2014, Allers, Gondo, and Rayam executed a search warrant at the residence of G. W. and Y.W. located in Baltimore County, Maryland, after having arrested G.W.

213) G. W. had approximately \$416,000 in the residence at the time of the search.

214) Y.W. had approximately \$1500 to \$2000 in the house at the time of the search.

215) Prior to calling Baltimore County law enforcement, Allers, Gondo, and Rayam, Searched the house and located a drawer full of money in an upstairs bedroom.

216) Allers told Gondo and Rayam that the homeowner "wouldn't miss a stack," or words to that effect and Allers took a stack of cash which contained approximately \$8,000 to \$10,000.

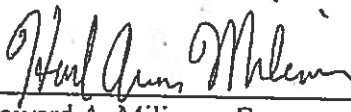
217) Allers also had his adult son with him, who was not a police officer, for the execution of the search.

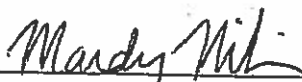
218) Allers's son also took some of the cash.

219) Allers pled guilty to the criminal activity associated with this incident. *See Exhibit C.*


220) The March 11, 2014 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

IN WITNESS WHEREOF, the Parties have, by counsel, executed this Stipulated Statement of Undisputed Material Facts.

 (SEAL)
Howard A. Miliman, Esq.

 (SEAL)
Mandy L. Miliman, Esq.
Counsel to Menyonde Lewis, Personal Representative
of the Estate of William James

MAYOR AND CITY COUNCIL OF BALTIMORE

By:  (SEAL)
Andre M. Davis, City Solicitor
Counsel to Mayor and City Council of Baltimore
and the Baltimore City Police Department

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



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September 20, 2019

Via Hand Delivery

The Honorable Jeannie J. Hong
Mitchell Courthouse, Chambers 234
100 N. Calvert Street
Baltimore, Maryland 21202

Re: *Estate of William James v. Mayor and City Council of Baltimore*
Case No. 24-C-19-002784

Dear Judge Hong:

This letter is sent on behalf of counsel for all parties. The cross-motions for summary judgment (based on the comprehensive stipulated statement of undisputed material facts filed with the City's motion) will be before Your Honor on Monday, September 23, 2019, pursuant to a somewhat unorthodox settlement arrangement. Specifically, the parties agreed to proceed in a creative and expeditious way to resolve the present dispute and, most importantly, to address the fundamental issue of indemnification for former Baltimore Police Department officers in connection with claims asserted in this and other so-called Gun Trace Task Force ("GTTF") cases.

Following Your Honor's ruling on the respective motions, the non-prevailing party shall note a timely appeal, and then the parties will promptly file a joint "bypass petition" for *certiorari* in the Court of Appeals. In a similarly-situated case brought in the U.S. District Court for the District of Maryland by a different plaintiff against several GTTF members, the parties reached a similar agreement. See *Potts v. Baltimore City Police Department*, Case No. CBD 16-3187. In *Potts* the district court recently certified the following question of state law to the Maryland Court of Appeals:

Whether, under the Maryland Local Government Tort Claims Act and related contractual provisions, in light of the undisputed facts in the record, the three former Baltimore City Police officers named in this action are entitled to indemnity for the judgment entered against them herein; that is, whether, as a matter of law on the undisputed facts, the judgment sought to be enforced by Plaintiff is based on "tortious acts or omissions committed by the [officers] within the scope of [their] employment with [the City]."

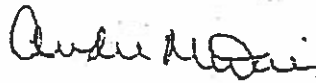
The very same question is presented in this case. (We have attached a copy of the Certification Order to this letter.) The *Potts* case is tentatively scheduled to be argued before the Court of Appeals in the January 2020 session. The present parties are hopeful that the instant case will be

The Honorable Jeannie J. Hong
September 20, 2019
Page 2 of 2

able to make its way to the Court of Appeals in time that the two cases can be consolidated for oral argument.

We hope that this explanation of the unusual arrangement agreed to in this case is helpful to the Court. Should Your Honor have any questions of counsel before Monday's hearing, we would be happy to appear for a chambers conference in advance of the hearing or otherwise meet with the Court at the Court's convenience.

Sincerely,



Andre M. Davis
City Solicitor

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cc: Howard A. Miliman, Esq.
Mandy L. Miliman, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IVAN POTTS,

Plaintiff,

v.

BALTIMORE CITY POLICE
DEPARTMENT, *et al.*,

Defendants.

Civil No.: CBD 16-3187

* * * * *

**ORDER CERTIFYING CONTROLLING QUESTION
OF MARYLAND LAW TO THE COURT OF APPEALS OF MARYLAND**

For the reasons set forth in the joint motion of the parties and for good cause shown, the Court finds that the entry of this Order is fully consistent with MD. CODE ANN., CTS. & JUD. PROC. § 12-601, *et seq.* and the requirements of MD. CODE ANN., CTS. & JUD. PROC. § 12-606.

The indemnification provision of the Maryland Local Government Tort Claims Act ("LGTC"), codified at Md. Code, Courts & Jud. Proc. Art., sec. 5-303(b) provides in pertinent part: "[A] local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government." Similarly, each of a series of labor agreements between the collective bargaining representative of Baltimore City Police officers and the Mayor and City Council of Baltimore ("the City") contains provisions that mirror the LGTC, providing as follows. in part:

The City will provide indemnification to any member of the unit who is made a defendant in litigation arising out of acts

within the scope of his/her employment that results in a monetary judgment being rendered against the employee.

The City has stipulated to the propriety of the judgment entered herein in favor of Plaintiff and to the validity of the former police officers' assignment of their ostensible right to indemnification to Plaintiff. Moreover, the City has stipulated that, under *Johnson v. Francis*, 239 Md. App. 530 (2018), *cert. denied*, 463 Md. 155 (2019), if indeed Plaintiff can prove by a preponderance of the evidence that the officers were acting within the scope of their employment as such with the Baltimore Police Department when they detained and assaulted him, planted a firearm at the scene and then falsely and fraudulently prepared charging documents prompting his criminal prosecution, then to that extent the City is obliged under the LGTCA (and the related MOU provision) to pay the judgment. *See Francis*, 239 Md. App. 530 at 598-99, stating:

In summary, where a money judgment is entered against an employee of a local government arising from tortious acts or omissions committed by the employee:

- The local government is liable to the plaintiff for the amount of the judgment, up to the limits provided in [the LGTCA], if and only if the employee was acting within the scope of his or her employment with the local government; and

- A plaintiff who obtains a judgment against a local government's employee can establish the local government's liability by filing an enforcement action against the local government. In such a proceeding, the local government can raise as a defense that the employee was not acting within the scope of his or her employment.

Thus, the undisputed stipulated facts in this record plainly reveal that the following question of state law is wholly determinative of the instant dispute and, accordingly, it is ORDERED that the following question is certified to the Court of Appeals of Maryland:

Whether, under the above statutory and contractual provisions, in light of the undisputed facts in the record, the three former Baltimore City Police officers named in this action are entitled to indemnity for the judgment entered against them herein; that is, whether, as a matter of law on the undisputed facts, the judgment sought to be enforced by Plaintiff is based on "tortious acts or omissions committed by the [officers] within the scope of [their] employment with [the City]."

IT IS FURTHER ORDERED that the Baltimore City Police Department and the Mayor and City Council of Baltimore shall be treated as the Appellant in the certification procedure before the Court of Appeals of Maryland; and it is further

ORDERED that the Clerk of this Court shall transmit to the Court of Appeals of Maryland, under the official seal of this Court, the original and seven copies of this Order, the docket entries in this case, together with the original and seven copies of the summary judgment papers filed by the parties with this Court; and it is further

ORDERED that the Clerk of this Court shall otherwise fulfill any request for all or part of the record simply upon notification from the Clerk of Court of the Court of Appeals of Maryland; and it is further

ORDERED that the City shall provide a check to the Clerk of this Court payable to the Clerk of the Court of Appeals of Maryland for the filing fee for docketing regular appeals as required by Maryland Rule 8-305(b); and it is further

ORDERED that all further proceedings are STAYED pending the receipt of the written opinion of the Court of Appeals of Maryland stating the law governing the question certified; and it is further

ORDERED that this case is ADMINISTRATIVELY CLOSED pending receipt of the written opinion of the Court of Appeals of Maryland.

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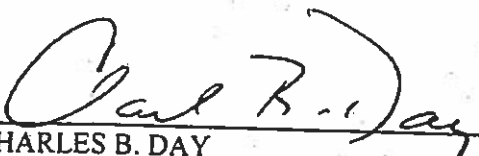
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SO ORDERED this 28th day of August, 2019.


CHARLES B. DAY
UNITED STATES MAGISTRATE JUDGE