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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 J. FRANKIE JURKOWSKI and  
9 AARON DONNY-CLARK,

10 Plaintiffs,

11 v.

12 CITY OF SEATTLE, et al.,

Defendants.

C15-1155 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) Defendants' motion to strike, docket no. 101, certain exhibits attached to  
16 the Declaration of Harry Williams IV, docket no. 64, is GRANTED in part and DENIED  
17 in part, as follows:

18 (a) Defendants' motion to strike is GRANTED with respect to  
19 Exhibits 63, 112, and 113. Plaintiffs have not explained the relevance of  
20 Exhibit 63, which is titled "After-Action Assessment of the Police Response to the  
21 August 2014 Demonstrations in Ferguson, Missouri," or how such document  
22 would be admissible at trial.<sup>1</sup> With respect to Exhibit 112, which contains an

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<sup>1</sup> Plaintiffs cite to Exhibit 63 for the proposition that the command at issue in this case to "move  
back" is indistinguishable from the unwritten "keep moving" policy adopted by law enforcement  
agencies in Ferguson, Missouri. *See* Plas.' Mot. at 18 (docket no. 63). Exhibit 63, however,  
does not compare the two scenarios or support plaintiffs' conclusion. Although a practice of  
requiring peaceful demonstrators to walk (or keep moving), rather than stand still, implicates  
First Amendment and other constitutional concerns, *see Abdullah v. Cnty. of St. Louis, Mo.*, 52  
F. Supp. 3d 936 (E.D. Mo. 2014) a situation involving violence, in which police and protestors

1 excerpt from a report dated June or July 2000 by the American Civil Liberties  
2 Union of Washington (“ACLU-WA”), titled “Out of Control – Seattle’s Flawed  
3 Response to Protests Against the World Trade Organization,” plaintiffs suggest  
4 that such evidence would be admissible under Federal Rule of Evidence 803(18)  
5 because the Department of Justice relied on the document, citing a letter to former  
6 Seattle Mayor Michael McGinn from former United States Attorney Jenny A.  
7 Durkan and Assistant Attorney General Thomas E. Perez. *See* <https://tinyurl.com/y9ycwqgv>  
8 (cited in Plas.’ Reply at 10 (docket no. 102)). Although on page 5 of  
9 such letter reference is made to the handling of the World Trade Organization  
10 demonstrations in 1999, the ACLU-WA report is not mentioned. To the extent  
11 plaintiffs offer the ACLU-WA report to show that Seattle Police Department  
12 (“SPD”) personnel were on notice of the potential for injury from deployed blast  
13 balls, they have not presented the requisite proof that SPD personnel received or  
14 reviewed the ACLU-WA report, and they have not shown that blast balls were  
15 even discussed in the ACLU-WA report. The ACLU-WA report describes the  
16 effects of tear gas canisters, Oleoresin Capsicum (“OC”) or pepper spray, and stun  
17 or concussion grenades; plaintiffs offer no link between these types of munitions  
18 and blast balls. Exhibit 113 purports to be a series of “tweets” from the Twitter  
19 feed of Paige Cornwell, a reporter for the Seattle Times. Plaintiffs do not indicate  
20 how such hearsay is relevant or would be admissible at trial.

11 (b) Defendants’ motion to strike is otherwise DENIED. Although  
12 Exhibits 24, 38, 45, 53, 59, 60, 75, 79, 85, and 105 would not be admissible in  
13 evidence in their current form, the Court treats them as setting forth plaintiffs’  
14 counsel’s arguments and has considered them in such light. Exhibits 40, 123, and  
15 125 contain photographs as to which plaintiffs can presumably, through their own  
16 or another witness’s testimony, lay a foundation for admission into evidence.  
17 Exhibit 55 is a report by SPD Lt. Stephen Hirjak, who would presumably, if called  
18 as a witness, testify consistently with its contents. Exhibit 106, which is a video of  
19 plaintiff J. Frankie Jurkowski walking and talking, appears to be offered to  
20 indicate the amount of time required to traverse a certain distance, and it has been  
21 considered for such purpose.

17 (2) Plaintiffs’ motion for partial summary judgment, docket no. 63, is  
18 DENIED. Plaintiffs have not shown the requisite absence of any genuine dispute of  
19 material fact and have not demonstrated that they are entitled to summary judgment as a  
20 matter of law against defendant City of Seattle. *See* Fed. R. Civ. P. 56(a).

21 are at risk of being injured, is entirely different and might well justify orders to disperse, keep  
22 moving, or “move back.” *See White v. Jackson*, 2016 WL 8674192 at \*26 (E.D. Mo. Sep. 30,  
23 2016) (distinguishing *Abdullah*).

1 (3) Oral argument on defendants' motion for summary judgment, docket  
no. 66, is hereby SET for Friday, July 28, 2017, at 10:00 a.m.

2 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of  
3 record.

4 Dated this 12th day of July, 2017.

5 William M. McCool  
6 Clerk

7 s/Karen Dews  
8 Deputy Clerk

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