

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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<b>JANE W</b> , IN HER INDIVIDUAL CAPACITY, AND IN	:
HER CAPACITY AS THE PERSONAL REPRESENTATIVE	:
OF THE ESTATES OF HER RELATIVES JAMES W, JULIE W,	: CIVIL ACTION
AND JEN W; <b>JOHN X</b> , IN HIS INDIVIDUAL CAPACITY, AND	: NO.: 18-569
IN CAPACITY AS THE PERSONAL REPRESENTATIVES OF	:
THE ESTATES OF HIS RELATIVES JANE X, JULIE X, JAMES X,	:
AND JOSEPH X; <b>JOHN Y</b> , IN HIS INDIVIDUAL CAPACITY; AND	:
<b>JOHN Z</b> , IN HIS INDIVIDUAL CAPACITY	:
Plaintiffs	:
v.	:
MOSES W. THOMAS	:
Defendant	:

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, upon consideration of the Plaintiffs' Motion for Summary Judgment, it is HEREBY ORDERED that the Motion is DENIED.

BY THE COURT:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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Plaintiffs	:
v.	:
MOSES W. THOMAS	:
Defendant	:

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**DEFENDANT’S MOTION IN OPPOSITION OF PLAINTIFFS’ MOTION FOR  
SUMMARY JUDGMENT**

Defendant, MOSES W. THOMAS, by and through the undersigned counsel, hereby file this Motion in opposition of Plaintiffs Jane W, John X, John Y, and John Z (“Plaintiffs”) Motion for Summary Judgment. Defendant files his Memorandum in Opposition of Plaintiffs Motion for Summary.

Respectfully submitted,

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Date: April 5, 2021

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JANE W**, IN HER INDIVIDUAL CAPACITY, AND IN  
HER CAPACITY AS THE PERSONAL REPRESENTATIVE  
OF THE ESTATES OF HER RELATIVES JAMES W, JULIE W,  
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AND JOSEPH X; **JOHN Y**, IN HIS INDIVIDUAL CAPACITY; AND  
**JOHN Z**, IN HIS INDIVIDUAL CAPACITY  
Plaintiffs  
v.  
MOSES W. THOMAS  
Defendant

**DEFENDANT’S MEMORANDUM OF LAW IN OPPOSITION OF PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

## I. BACKGROUND

Around December 24, 1989, Charles Taylor’s army known as the National Patriotic Front of Liberia (“NPFL”) attacked a military outpost of the Liberia Armed Forces of Liberia “AFL” in Nimba County, setting off a civil war in Liberia. See Declaration of Elizabeth Blunt at ¶5; See also, Declaration of Mark Hubbard at ¶5. Taylor had been training the NPFL in Libya and subsequently in Burkina Faso for several years before the incursion. Hubbard at ¶5. As tensions escalated, those who could leave Liberia did so. On May 31, 1990, the United Nations evacuated its international staff from Liberia and closed its offices. Blunt at ¶15. By June 1990, Monrovia had no electricity or running water. Id at ¶21.

In June 1990, journalist and author, Mark Huband covered the Liberia civil war for the Financial Times and the Guardian. Hubard at ¶1 and ¶8. Based in Monrovia, Mr. Huband could better track troop movement. He walked the streets of Monrovia and saw for himself what was taking place. Mr. Huband “learned to identify the different forces by their clothing.” Id at ¶9. According to Mr. Huband, “the AFL had a green/brown uniform, while the NPFL usually wore civilian clothes and not uniforms, except for the senior figures, who wore olive green fatigues.” Id.

By July 1990, the rebels forces, led by Charles Taylor, were converging on Monrovia, Liberia. Charles Taylor’s NPFL forces were entering Monrovia from the east, whereas Prince Johnson’s<sup>1</sup> rival rebel group, the Independent National Patriotic Front “INPFL” were approaching Monrovia from the North. Id at ¶16. The NPFL and INPFL were fighting separately against the AFL and would later fight each other. Hubard at ¶8.

On July 18, 1990, the battle lines in Monrovia shifted when the INPFL, Prince Johnson’s army, establish its frontline and Mamba Point was now located in INPFL-controlled territory. Hubard at ¶11.

During the night of July 23, 1990 and the days, that followed, INPFEL advanced to the lower end of Crown Hill, the vicinity of St. Peter’s Lutheran Church (the Lutheran Church). Hubard at ¶12, ¶13; See also Expert report Amb. Dennis Jet part 1 at Pg. 17 “On July 23, INPFL soldiers “cross[ed] over the Mesurado River bridges from the North into Crown Hill, the central business district, and capital by-pass areas. Fierce firefights took place between the INPFL and [the AFL]”. July 25, 1990, “[f]ighting and heavy shooting broke out in several sections of downtown Monrovia, Sinkor, and ELWA . . . as the rebels stepped up their pressure on the [AFL.]” Id at Pg.

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<sup>1</sup>A faction of the NPFL known as the Independent National Patriotic Front of Liberia (“INPFL”) have broken away from Taylor’s command under the leadership of Prince Johnson. Declaration of Hubard at ¶8.

18. According to Amb. Jet, the AFL and the NPFL exchanged fire between the Executive Mansion and Bushrod Island and that there was also heavy shooting and fighting in Congo Town and the outskirts of Sinkor. Id. The NPFL moved from Paynesville toward Sinkor. Id.

By July 27, 1990, Taylor's rebel forces, NPFL, have taken over Paynesville and were about six miles from the center of Monrovia. Blunt at ¶16. On that same day, Prince Johnson's INPFEL have moved deeper into downtown Monrovia from its base on Bushrod Island and there were explosions near the Executive Mansion. Report of Amb. Dennis Jet Part 1 at Pg. 19 The Liberian Government and its AFL forces were trapped in the center of Monrovia. Id at ¶17. On or about July 27, 1990, the AFL's enclave in Monrovia was centered on the Executive Mansion. Blunt at ¶18. After NPFL and INPFEL took over Monrovia in July 1990, the main goal of SATU<sup>2</sup> was not to take back the city but keep the rebels from reaching the Executive Mansion where Doe was living. Hubbard at ¶12

On July 29, 1990, St. Peter's Lutheran Church ("the Lutheran Church) was attacked and approximately 600 individuals were killed. The Lutheran Church was located in the Sinkor district of Monrovia. Hubard at ¶16. According to Journalist Mark Huband, who was in Liberia at the time covering the civil war for the Guardian, he cannot be certain whether by July 29, 1990 the NPFL had reached Sinkor district; however, he is certain that on August 2, 1990, Taylor's NPFL occupied much of Sinkor district. Hubard at ¶13.

On February 12, 2018, Plaintiffs filed a fourteen (14) count Complaint against Defendant, Moses Thomas, seeking compensatory and punitive damages against Defendant under the Torture Victim Protection Act of 1991 (hereinafter "TVPA") and under the Alien Tort Statute (hereinafter "ATS"), 28 U.S.C. ¶1350. Plaintiff's alleged that Defendant was the head of a

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<sup>2</sup> Special Anti-Terrorist Unit (SATU) charged with protecting the president and the executive mansion and were stationed at the mansion. See Declaration of William Z at ¶11, ¶24

specialized branch of the Liberian Government's armed forces, Armed Forces of Liberia ("AFL") and that Defendant commanded armed forces to surround the Lutheran Church on July 29, 1990 and indiscriminately shoot and kill approximately 600 civilians. Plaintiffs Jane W and John X, John Y, and John Z claim that they were in the Lutheran Church on July 29, 1990, that they witnessed the slaughter of hundreds of civilians, including their own family members and that they survived by hiding under piles of dead bodies. Plaintiffs, Jane W and John X, alleged that, in addition to their individuals, they are also seeking recoveries as personal representatives of the estates of relatives (James W, Julie W, Jen W, Jane X, Julie X, James X, and Joseph X.

Discovery has concluded. Plaintiffs did not conduct and depositions during discovery. Plaintiff now seeks summary judgment pursuant Rule 56(3)(4) based on declarations. For reasons that follows, Defendant requests that declaration statements made based on hearsay statement by others should stricken and not considered on summary judgment.

Given that there are materials facts as to who was responsible for the July 29, 2019 Lutheran Church massacre, Plaintiff's Motion for Summary Judgement should be denied.

## **II. STANDARD OF REVIEW**

Summary judgment is appropriate only when there is "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The central inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Rule 56(c) mandates summary judgment against a party who fails to establish the existence of an element essential to the party's case and on which that party bears the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The moving party bears the initial burden of showing the absence of a genuine issue of material fact.

*Celotex*, 477 U.S. at 323. Once the moving party meets this burden, the non-movant must come forward with specific facts showing that there is a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In evaluating a motion for summary judgment, the evidence must be viewed in the light most favorable to the non-moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The non-moving party may not rest upon its mere allegations in its filed complaint, however, but rather “must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The mere existence of a scintilla of evidence in support of the non-moving party’s position will not suffice. Rather, there must be evidence on which the jury could reasonably find for the non-moving party. Hopson v. DaimlerChrysler Corp., 306 F.3d 427, 432 (6th Cir. 2002). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson, 477 U.S. at 248; Celotex, 477 U.S. at 322-26; Doe v. Abington Friends Sch., 480 F.3d 252, 256 (2007). All facts and inferences must be construed in the light most favorable to the non-moving party. Peters v. Delaware River Port Auth., 16 F.3d 1346, 1349 (3d Cir. 1994).

The party seeking summary judgment must initially provide the court with the basis for its motion. *Celotex Corp.*, 477 U.S. at 323. This requires the moving party to either establish that there is no genuine issue of material fact and that the moving party must prevail as a matter of law, or demonstrate that the nonmoving party has not shown the requisite facts relating to an essential element of an issue on which it bears the burden. Id. at 322–23. Once the party seeking summary judgment has carried this initial burden, the burden shifts to the nonmoving party. To avoid summary judgment, the nonmoving party must demonstrate facts supporting each element for which it bears the burden, and it must establish the existence of “genuine issue[s] of material fact” justifying trial. *Celotex Corp.*, 477 U.S. at 324.

Once a moving party satisfies its initial burden of establishing a *prima facie* case for summary judgment under Fed. R. Civ. Pro. 56(c), the opposing party “must do more than simply show that there is some metaphysical doubt as to material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmoving must set out specific facts showing a genuine issue for trial using affidavits or as otherwise provided in Fed. R. Civ. Pro. 56(e). that there is no genuine issue of material fact and that the moving party must prevail as a matter of law, or demonstrate that the nonmoving party has not shown the requisite facts relating to an essential element of an issue on which it bears the burden. *Id.* at 322–23. To avoid summary judgment, the nonmoving party must demonstrate facts supporting each element for which it bears the burden, and it must establish the existence of “genuine issue[s] of material fact” justifying trial. *Celotex Corp.*, 477 U.S. at 324. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Declaration statements made based on hearsay statements by others should not be considered for summary judgment. *Bouriez v. Carnegie Mellon Univ.*, No. Civ.A.02–2104, 2005 WL 2106582, at \*9 (W.D.Pa. Aug.26, 2005). Only if the hearsay statements fall within one of the established exceptions to the hearsay rule may they be factored into a summary judgment analysis. *Id.* at \*8 It is well-established that a declarant is not competent to testify to matters beyond his or her personal knowledge. *See Fed.R.Evid.* 602 (“A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”). “Thus, the record must establish the personal knowledge of an affiant, or that affiant's declarations may not be considered on summary judgment.” *Fitzpatrick v. Nat'l Mobile Television*, 364 F.Supp.2d



483, 495 (M.D.Pa.2005); *see also* Fed.R.Civ.P. 56(c)(4) (noting that the Court may reject an affidavit that fails to meet the personal knowledge requirement of Federal Rule of Civil Procedure 56(c)(4)).

### **III. Hearsay and Inadmissible Declaration of Plaintiff Jane W Should be Stricken Pursuant to Rule 56(c)(4)**

Declaration statements made **based on** hearsay statements by others should not be considered for summary judgment. *Bouriez v. Carnegie Mellon Univ.*, No. Civ.A.02–2104, 2005 WL 2106582, at \*9 (W.D.Pa. Aug.26, 2005). Only if the hearsay statements fall within one of the established exceptions to the hearsay rule may they be factored into a summary judgment analysis. *Id.* at \*8. Accordingly, hearsay statements in paragraphs 10 that Jane W’s aunt told her that she learned from neighbors that the government soldiers from the Special Anti-Terrorist Unit (“SATU”) had arrested a group of men is admissible hearsay.

Hearsay statement in paragraph 16 that a “man in the Church told [Jane W] that the big man was Moses Thomas, the head of SATU is inadmissible hearsay. Hearsay statement in paragraph 26 that 3 months after the incident, “one of [Jane W’s] relative told her that her aunt had been killed in the massacre” and that “JW heard from someone who buried bodies at the Church that they saw [the bodies] of JW’s husband and daughters are inadmissible hearsay.

Hearsay statement in paragraph 28 that Jane W’s father told her that he feared should be killed if she shared her story is inadmissible hearsay. Excluding the hearsay statements from Jane W’s Declaration, there are material issues of fact as to whether Defendant, Moses Thomas, was responsible for any injuries and or damages to Jane W and her family members. In addition, Jane W stated in paragraph 15 her Declaration, that soldiers surrounded the church and that a soldier wearing olive green army hat told that group that he could protect them. According to Journalist, Mark Hubbard of the Guardian, senior members of Charles Taylor’s NPFL wore olive

green fatigues. See Declaration of Mark Hubbard at ¶9. The admissible portion of Jane W's Declaration and the Declaration of Mark Hubbard present issue of material fact as to whether Defendant or members of the NPFL were responsible for the Lutheran Church massacre. Accordingly, Plaintiff Jane W, in her individual capacity and her capacity as the personal representatives of the estates of James W, Julie W, and Jen W, motion for summary judgment should be denied.

**IV. Declaration of Plaintiff John X Presents Material Issue of Facts as to Who Was Responsible for the July 29, 1990 Lutheran Massacre**

John X's Declaration presents material issue of fact as to whether Defendant Moses Thomas was responsible for the July 29, 1990 Lutheran Church killing. According to John X, the first week that he moved to the church, a group of Special Anti-Terrorist Unit soldiers entered the church compound and advised that they were there at the orders of Colonel Gay to protect the people at the church. ¶22. According to John X, when the soldiers mentioned Colonel Gay, he became afraid because he knew Colonel Gay operated a death squad. Id. On the night of July 29, 1990, John X saw soldiers wearing the same uniform as the soldiers who previously indicated that they were sent by Colonel Gay, on the day of the incident, Inconsistent John X indicated that the commander indicated that he and his troops were sent by Colonel Gay, enter the church front door and open fire on the crowd without saying anything. Id at ¶24, 25. John X dropped to the ground hid among bodies and pretended to be dead. After the soldiers left, John X remained hidden among the bodies until around 7:00 A.M. in the morning when he heard voices of people coming to the church to help the survivors. ¶30. According to John X, later found the bodies of his daughter, Julie X, his wife, Jane X, and his two brothers James X and Joseph X. ¶31.

There is nothing in John X's declaration to support that Defendant Moses Thomas was responsible for the July 29, 1990 Lutheran Church massacre to warrant granting John X's motion

for Summary Judgment. According to John X, the soldiers were part of a death squad commanded by Colonel Gay. According to Journalist Mark Hubbard, the other death squad leader who was thought to be involved with the massacre with commander Michael Tilly. Hubbard at ¶27.

Accordingly, Plaintiff John X, in his individual capacity and his capacity as the personal representatives of the estates of Jane X, Julie X, James X, and Joseph X, motion for summary judgment should be denied.

**V. Motion to Strike Hearsay and Inadmissible Declaration of Plaintiff John Y. Statements/Declarations of Plaintiff John Y are Inadmissible Hearsay and thus, Should be Stricken, Pursuant to Rule 56(c)(4)**

The following should be stricken from Plaintiff, John Y's declaration as inadmissible hearsay:

Statement in paragraph 4 of John Y's declaration that he heard from [his] father that the AFL were targeting anyone in Monrovia that was originally from Nimba is inadmissible hearsay.

Statement in paragraph 6 of John Y's declaration that 3 three or four women in downtown Monrovia, told him that AFL soldiers attacked the United Nations compound in Monrovia is inadmissible hearsay.

The admissible portion of John Y's Declaration present material issue of fact so to whether or not Defendant Moses Thomas was involved in the July 29, 1990 Lutheran Church massacre. According to John Y, on July 29, 1990, in the mid-afternoon, a military jeep, with three individuals, stopped outside of the Lutheran compound for about five minutes, talked to a woman, the woman got into the jeep and they drove off. ¶18 Later that night when it was dark, he heard heavy sound as if the compound's gates were being busted open and everyone began hiding. There was no electricity and it was pitch black and the soldiers wore black masks. ¶21. According to John Y, a soldier entered and spoke in Krahn for

about five minutes. ¶22. John Y peaked out and saw a soldier lower the gas lamp, fire a pistol, then walked out the door. Id. As he left, the soldiers started shooting randomly. Id. According to John Y, he got shot in the leg. He stayed put in the darkness and the incident last for over an hour.

Although there are inconsistencies in John Y's Declaration as to whether the soldiers said anything prior to shooting, There is nothing in John Y's declaration to support that Defendant Moses Thomas was responsible for the July 29, 1990 Lutheran Church massacre to warrant granting John Y's motion for Summary Judgment.

Accordingly, Plaintiff John Y's motion for summary judgment should be denied.

**VI. John Z's Declaration Presents Issues of Material Facts to Preclude Summary Judgment.**

John Z went to the Lutheran Church on July 27, 1990. At times he would stand on the inside of the compound gate on the second floor and look out onto Tubman Boulevard or 14<sup>th</sup> Street. The night before the attack, he saw soldiers from the Special Anti-Terrorist Unit (SATU) and soldiers from the Death Squad patrolling in front of the Lutheran Church compound. ¶8, ¶11. The Death Squad soldiers are distinguishable from the SATU because the Death Squad wore masks. ¶11.

On July 29, 1990, around midnight, John Z saw soldiers with masks on their faces surrounding the fence of the church compound. ¶14. Not long after they entered, they opened fire, and people started running everywhere. Id. A heavy body fell on top of John Z and it made it difficult for him to breathe.¶15 According to John Z, the shooting lasted more than an hour. John Z was not shot. According to John Z, he was among the bodies when a soldier stepped on is should and arm with is boots; however, John Z was in shock and did not feel pain and did not move. According to John Z, after the shooting, it was dark, however, he saw Defendant, Moses

Thomas in the front gate of the compound about 10 feet away. Id. ¶17. Given the facts in this case that there was no electricity in the city at the time of the attack and it was pitch black in the church and that the soldiers were wearing masks, John Z purported identified Defendant on the day of the attack presents a credibility issue for the trier of fact. See Declaration of Y at ¶21; See also Declaration of Blunt at ¶21. Accordingly, summary Judgement on John Z’s Motion for Summary Judgment should be denied.

## **VII. Declaration of William W**

William W’s declaration that AFL soldiers controlled the area around the Lutheran Church in later July 1990 is unsupported by the record. According to journalists and Plaintiffs’ expert, the night of July 23, 1990 and the days, that followed, INPFEL advanced to the lower end of Crown Hill, the vicinity of St. Peter’s Lutheran Church (the Lutheran Church). Hubbard at ¶12, ¶13; See also Expert report Amb. Dennis Jet part 1 at Pg. 17 “On July 23, INPFL soldiers “cross[ed] over the Mesurado River bridges from the North into Crown Hill, the central business district, and capital by-pass areas. Fierce firefights took place between the INPFL and [the AFL]”. July 25, 1990, “[f]ighting and heavy shooting broke out in several sections of downtown Monrovia, Sinkor, and ELWA . . . as the rebels stepped up their pressure on the [AFL.]” Id at Pg. 18.

According to Amb. Jet, the AFL and the INPFL exchanged fire between the Executive Mansion and Bushrod Island and that there was also heavy shooting and fighting in Congo Town and the outskirts of Sinkor. Id. The NPFL moved from Paynesville toward Sinkor. Id. By July 27, 1990, Taylor’s rebel forces, NPFL, have taken over Paynesville and were about six miles from the center of Monrovia. Blunt at ¶16. On that same day, Prince Johnson’s INPFEL have moved deeper into downtown Monrovia from its base on Bushrod Island and there were

explosions near the Executive Mansion. Report of Amb. Dennis Jet Part 1 at Pg. 19. William W was not the Lutheran Church at the time of the attack. William W admitted that he cannot say who was responsible for the massacre. Declaration of William W at ¶31. William W's assertion on the night of July 29, only AFL soldiers could have operated freely in the area which included the Lutheran Church and its surroundings is unsupported by the facts, is speculation and inadmissible. There is no admissible evidence in William W's declaration that would support a finding that Defendant was responsible for the Lutheran Church massacre.

**VIII. Statements/Declarations of Plaintiff William X are Inadmissible Hearsay and thus, Should be Stricken**

William X did not witness the Lutheran Church massacre. Paragraph 19 of his Declaration as to who is responsible for the massacre is inadmissible hearsay and should be excluded in consideration for Plaintiff's Motion for Summary Judgment. There is nothing in William X's declaration that would support that Defendant, Moses Thomas was responsible for the July 29, 1990 Lutheran Church Massacre.

**IX. William Y's Declaration Presents Issues of Material Facts to Preclude Summary Judgment**

William X claims that he was stationed at the beach when he heard sounds of gunfire coming from the Lutheran Church on January 29, 1990. He was the only 1 from his station that ran towards the gunfire. When he arrived at the church, he saw a lot of men, all of them SATU with their red uniforms. Some were wearing red berets and others had combat helmets. According to William X, he saw Defendant, Moses Thomas, standing by the flagpole inside the fence of the church compound. ¶14. William X indicated that he could saw Colonel Thomas' name tab and he went towards him. Id. Colonel Thomas asked him what he was doing abandoning his post at the beach and ordered that he go back to his post at the beach. Id.

William X obeyed and returned to the beach. William X claims that the next day, he returned to the Lutheran church and discovered the body of his sister.

Although, William X claims that he was at the Lutheran Church at the time of the massacre, that he saw SATU troops shooting at civilians, and that he spoke to the SATU commander Moses Thomas on July 29, 1990, he stated that he decided to leave Liberia on July 30, 1990, after journalist Elizabeth Blunt reporting on BBC that SATU had attacked the Lutheran Church. William X's declaration is not credible. It is undisputed that there is no beach near to Lutheran church from which William X could have heard shoots and ran to the church. In addition, all of the other eyes description of the event various significantly from William X. For example, the other eyes indicated that it was pitch black and that the soldiers were oval-green military uniform. William X claims that they were wearing red. Although there was no electricity and the place was pitch black, William X claims that he was able to see Defendant Moses Thomas' name tag.

Finally, if William X was there at the massacre, as he claimed, he would have already known that SATU attacked the church and would not need to hear the information from reporter Elizabeth Blunt the next day to decide to leave Monrovia.

**X. The Hearsay and Inadmissible Declaration of William Z Should be Stricken Pursuant to Rule 56(c)(4)Dismiss William Z**

Paragraph 34 of William Z's declaration that it is unlikely that SATU soldiers would have taken Orders from Tilley, the leader of the Death Squad is inadmissible speculation, not base on personal knowledge and must be excluded. Paragraph 36 of William Z's declaration that he heard that AFL was responsible for the massacre, is inadmissible hearsay. Paragraph 37 of William's Declaration that at the time of the massacre, the Sinkor district of Monrovia, where the Lutheran Church is located, was within AFL control is not based on personal knowledge, calls

for speculation, and is inadmissible. According to William X, in July 1990, he was a “few hours outside of Monrovia” and he remained outside of Monrovia until after Doe was killed in September 1990. ¶31. William X speculates that at the time of the massacre, the area of the Lutheran Church was under the control of the AFL because when he returned to Liberia in September 1990, he saw AFL checkpoints in Sinkor. ¶37.

**XI. Plaintiffs’ Expert Report are Inconclusive as to the Material Facts and thus Summary Judgment is Precluded**

Plaintiffs presented the expert report of Dr. Ambassador Dennis C. Jett, former member of the U.S. State Department, former Ambassador to Mozambique and professional of international affairs at Penn State University. Dr. Jett is has not served as an expert witness in any case in the previous four years. Dr. Jett is not a damages expert and the Plaintiffs did not present any expert on damages.

Dr. Jett’s opinioned solely on the issue as to who was responsible for the July 29, 1990 Lutheran Church massacre. Dr. Jett’s is of the opinion that the massacre was carried out by members of the Armed Forces of Liberia. Dr. Jett’s does not name Defendant, Moses Thomas, personally nor does he name SATU.

According to Dr. Jett’s, the AFL must be responsible for the massacre because from July to early August, that area surrounding the Executive Mansion and Sinkor remained AFL control. Reviewing reports from July and early August 1990, it is clear that throughout the battle for Monrovia the area surrounding the Executive Mansion and Sinkor remained in AFL control. There are material issues of fact as to whether said area was under AFL control on July 29, 1990.

July 25, 1990, the NPFL had not advanced further into Monrovia, there were “no reports of rebels in the downtown area of changes in military positions.” Dr. Jett’s Report at Pg. 18. Later that day, however, “[f]ighting and heavy shooting broke out in several sections of downtown



Monrovia, Sinkor, and ELWA . . . as the rebels stepped up their pressure on the [AFL.]”Id. The AFL and the INPFL exchanged fire between the Executive Mansion and Bushrod Island. Id. There was also heavy shooting and fighting in Congo Town and the outskirts of Sinkor. Id. NPFL moved from the Paynesville through the bush on either side of Tubman Boulevard toward Sinkor and skirmishes took place on both sides of the road. Although there were heavy fights between AFL and the NPFL near the Executive Mansion and on Tubman Boulevard toward Sinkor on July 25, 1990, Plaintiff’s expert concludes that no one else could have attacked the Lutheran Church but the AFL because AFL was in control. Plaintiff’s expert conclusion is speculation, is unsupported by the record and present material issues of fact to preclude summary judgment. Dr. Jett should be subject to cross examination to determine credibility of the testimony proposed.

According to Journalists who were covering the war reported that during the night of July 23, 1990 and the days, that followed, INPFEL advanced to the lower end of Crown Hill, the vicinity of St. Peter’s Lutheran Church (the Lutheran Church), Hubbard at ¶12, ¶13, Plaintiff’s expert concluded that INPFEL could not have attacked the because it was in AFL’s controlled territory. This is pure speculation. By July 27, 1990, Taylor’s rebel forces, NPFL, have taken over Paynesville and were about six miles from the center of Monrovia. Blunt at ¶16. On that same day, Prince Johnson’s INPFEL have moved deeper into downtown Monrovia from its base on Bushrod Island and there were explosions near the Executive Mansion.

On or about July 27, 1990, the AFL’s enclave in Monrovia was centered on the Executive Mansion. Blunt at ¶18. After NPFL and INPFEL took over Monrovia in July 1990, the main goal of SATU was not to take back the city but keep the rebels from reaching the Executive Mansion where Doe was living. Hubbard at ¶12. Nonetheless, Plaintiff’s expert concludes, without any

factual basis, that SATU abandoned the Executive Mansion, 2 days later, on July 29, 1990 to kill civilians at the Lutheran Church.

**CONCLUSION**

For the foregoing reasons and reviewing the facts more favor to Defendant, Defendant respectfully requests that this Honorable Court enters an Order denying Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

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Date: April 5, 2021

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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<b>JANE W</b> , IN HER INDIVIDUAL CAPACITY, AND IN	:	
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<b>JOHN Z</b> , IN HIS INDIVIDUAL CAPACITY	:	
Plaintiffs	:	
v.	:	
	:	
MOSES W. THOMAS	:	
Defendant	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, the Defendant's Motion in Opposition of Plaintiffs Motion for Summary Judgment, was filed via the Court's electronic filing system and is available for downloading and thus served upon the parties of record.

Respectfully submitted,

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