

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**ADRIAN CALISTE AND BRIAN GISCLAIR,
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED**

v.

**HARRY E. CANTRELL, MAGISTRATE JUDGE
OF ORLEANS PARISH CRIMINAL DISTRICT
COURT**

CIVIL ACTION NO. 17-6197

(CLASS ACTION)

JUDGE FALLON

MAGISTRATE NORTH

**FED.R.CIV.P. 12(b) DEFENSES, ANSWER, AFFIRMATIVE DEFENSES, AND JURY
REQUEST IN RESPONSE TO CLASS ACTION COMPLAINT**

Now Into Court, through undersigned counsel, comes Magistrate Judge Harry E. Cantrell, sought to be made defendant herein, who, reserving all defenses available under Fed.R.Civ.P. 12(b), responds to plaintiffs' Class Action Complaint as follows:

Unless specifically admitted herein, the allegations of the plaintiffs, inclusive of all footnotes and references to other documents and things, are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed for failure to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed for failure to join a party under Rule 19.

Third Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed for lack of subject matter jurisdiction.

Fourth Affirmative Defense

Defendant is entitled to absolute immunity.

Fifth Affirmative Defense

Defendant is entitled to qualified immunity.

Sixth Affirmative Defense

The proposed class action fails to meet the numerosity requirement of Fed.R.Civ.P. 23(a)(1).

Seventh Affirmative Defense

The proposed class action fails to meet the commonality requirement of Fed.R.Civ.P. 23(a)(2).

Eighth Affirmative Defense

The proposed class action fails to meet the typicality requirement of Fed.R.Civ.P. 23(a)(3).

Ninth Affirmative Defense

The named plaintiffs will not adequately and fairly protect the interests of the proposed class, as required by Fed.R.Civ.P. 23(a)(4).

Tenth Affirmative Defense

The proposed class lacks common questions of law or fact, as required by Fed.R.Civ.P. 23(b)(3).

Eleventh Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed as moot.

Twelfth Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed on the grounds that it presents a non-justiciable political question more properly resolved by the legislature rather than the judiciary.

Thirteenth Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed because the named plaintiffs are not adequate representatives of the proposed class.

Fourteenth Affirmative Defense

Pursuant to 42 USC § 1988, Defendant will be entitled to recover his attorneys' fees if he is the prevailing party.

Fifteenth Affirmative Defense

Even were they to prevail, which they should not, plaintiffs are not entitled to recover attorneys' fees that are unreasonable, excessive, unwarranted, and unrelated to this litigation.

Sixteenth Affirmative Defense

Plaintiffs' Class Action Complaint should be dismissed because the Defendant is not a proper party to a declaratory judgment action challenging the constitutionality of statutes.

Seventeenth Affirmative Defense

Defendant specifically pleads all affirmative defenses set forth in Rule 8(c) of the Federal Rules of Civil Procedure which are applicable to this case and/or any and all other affirmative defenses and qualified and/or good faith immunities, all of which are pled herein as if copied in extenso.

Eighteenth Affirmative Defense

Defendant affirmatively pleads the immunities, privileges, limitations, and benefits afforded him by La. R.S. 9:2800, La. R.S. 9:2792.4, La. R.S. 9:2798.1, La. R.S. 13:5101, La. R.S. 13: 5105, La. R.S. 13:5106, and La. R.S. 13:5112.

Nineteenth Affirmative Defense

Defendant affirmatively pleads that, with respect to the complained of actions/inactions specified in plaintiffs' complaint, defendant at all times acted in good faith and within the scope of his judicial authority under applicable law and is thus entitled to good faith and qualified immunity from suit under both state and federal law.

Twentieth Affirmative Defense

Defendant affirmatively pleads that, while carrying out the complained of actions/inactions specified in plaintiffs' complaint, he at all times acted in accordance and compliance with applicable local, state, and federal law.

Twenty-First Affirmative Defense

Defendant affirmatively pleads that plaintiffs' claims are subject to applicable statutes of prescription, peremption, laches, repose, and are otherwise untimely and time-barred.

Twenty-Second Affirmative Defense

Plaintiffs reference and/or attach numerous exhibits to their Class Action Complaint but have not specified which facts alleged therein are directed to Defendant, making it impossible for Defendant to respond to the facts contained in those exhibits. To the extent responses are required, all facts alleged in the documents referenced or attached to plaintiffs' Class Action Complaint are denied.

Twenty-Third Affirmative Defense

No plaintiff requested that Defendant be recused from presiding over their criminal proceeding on grounds of bias or conflict of interest.

Twenty-Fourth Affirmative Defense

No plaintiff raised the constitutionality of either the substantive or procedural manner in which bail was set in their underlying criminal proceedings.

Twenty-Fifth Affirmative Defense

Defendant affirmatively pleads that plaintiffs' claimed damages were caused solely by their own legal fault, so as to completely bar any recovery by plaintiffs herein.

Twenty-Sixth Affirmative Defense

Defendant affirmatively pleads that plaintiffs' claimed damages, if not found to have been caused solely by their own legal fault, alternatively, were caused at least in part by plaintiffs' own comparative fault and contributory negligence, so as to result in a proportionate reduction in any judgment which plaintiffs may ultimately recover.

Twenty-Seventh Affirmative Defense

Defendant affirmatively pleads that plaintiffs' claimed damages were caused by the legal fault of third parties over whom Defendant exercised no supervision or control, nor whom Defendant employed, such that said third party fault cannot be imputed to Defendant.

Twenty-Eighth Affirmative Defense

Defendant affirmatively pleads that plaintiffs have failed to mitigate their damages.

Introduction

The first three numbered paragraphs of plaintiffs' Class Action Complaint are comprised of self-serving conclusory allegations and statements of purported fact that do not require a response from Defendant. However, in an abundance of caution, and in the event a response is required, Defendant denies the allegations contained in the Paragraphs 1, 2, and 3.

Jurisdiction and Venue

- 4. Denied as calling for a legal conclusion.
- 5. Denied as calling for a legal conclusion.

Parties

- 6. Denied for lack of sufficient information.
- 7. Denied for lack of sufficient information.
- 8. Defendant admits that he is an elected Magistrate Judge for the Orleans Parish Criminal District Court. All other allegations are denied as calling for legal conclusions.

Facts

Adrian Caliste

- 9. Denied for lack of sufficient information.
- 10. Denied for lack of sufficient information.
- 11. Denied for lack of sufficient information.

12. Admitted.
13. Admitted.
14. Admitted.
15. Denied.
16. Denied as written, the record of the hearing is the best evidence of its contents and it is pleaded herein as if copied en extenso.
17. Denied for lack of sufficient information.
18. Denied for lack of sufficient information.
19. Denied for lack of sufficient information.

Brian Gisclair

20. Denied for lack of sufficient information.
21. Denied for lack of sufficient information.
22. Admitted.
23. Admitted.
24. Denied as written, the record of the hearing is the best evidence of its contents and it is pleaded herein as if copied en extenso.
25. Denied.
26. Denied.
27. Denied for lack of sufficient information.
28. Denied for lack of sufficient information.
29. Denied for lack of sufficient information.
30. Denied for lack of sufficient information.
31. Denied.

- 32. Denied.
- 33. Denied.
- 34. Denied.
- 35. Denied.
- 36. Denied.
- 37. Denied.
- 38. Denied.
- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Admitted.
- 43. Admitted.
- 44. Denied.
- 45. Admitted.
- 46. Denied for lack of sufficient information.
- 47. Denied for lack of sufficient information.
- 48. Denied for lack of sufficient information.
- 49. Admitted.
- 50. Denied.
- 51. Denied.
- 52. Denied.
- 53. Denied.
- 54. Denied for lack of sufficient information.

- 55. Denied.
- 56. Denied for lack of sufficient information.
- 57. Denied for lack of sufficient information.
- 58. Denied for lack of sufficient information.
- 59. Denied for lack of sufficient information.
- 60. Denied.
- 61. Denied for lack of sufficient information.
- 62. Denied for lack of sufficient information.
- 63. Denied for lack of sufficient information.
- 64. Denied.

Class Action Allegations

- 65. Denied for lack of sufficient information.
- 66. Denied.
- 67. Denied.
- 68. Denied.
- 69. Denied.

A. Numerosity. Fed. R. Civ. P. 23(a)(1).

- 70. Denied.
- 71. Denied.

B. Commonality. Fed. R. Civ. P. 23(a)(2).

- 72. Denied.
- 73. Denied.
- 74. Denied.

C. Typicality. Fed. R. Civ. P. 23(a)(3).

75. Denied.

76. Denied.

D. Adequacy. Fed. R. Civ. P. 23(a)(4).

77. Denied.

78. Denied.

79. Denied for lack of sufficient information.

80. Denied for lack of sufficient information.

81. Denied for lack of sufficient information.

82. Denied for lack of sufficient information.

83. Denied for lack of sufficient information.

E. Rule 23(b)(2).

84. Denied.

85. Denied.

Claims for Relief

Count One: Defendant's Policies and Practices Violate Plaintiffs' Rights By Jailing Them Solely Because They Cannot Afford a Money Payment Without an Inquiry Into and Findings Concerning Their Ability to Pay or Consideration of Non-Financial Alternative Conditions of Release

86. Defendant reasserts and reiterates, as if copied herein *in extenso*, his responses to the allegations contained in Paragraphs 1-85.

87. Denied.

Count Two: Defendant's Institutional Financial Conflict of Interest in the Imposition of Secured Financial Conditions of Release Violates Due Process

88. Denied.

Request for Relief

Defendant denies that the plaintiffs are entitled to the relief sought.

Request for Jury

Defendant requests a trial by jury on all claims as the law permits.

Wherefore, Defendant requests a trial by jury and request that after due proceedings are had there be judgment entered in his favor, dismissing plaintiffs' Class Action Complaint, with prejudice, at plaintiffs' cost, and for all general and equitable relief.

Respectfully submitted,

/s/ Celeste Brustowicz

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2017, a copy of the foregoing pleading has been forwarded to all counsel of record via CM/ECF filing through the United States District Court system, email and/or United States Mail.

/s/ Celeste Brustowicz