IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	§	CIVIL ACTION
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
THE CITY OF BATON ROUGE, ET AL.	§	NO. 13-579-BAJ-RLB
	§	
Defendants.	§	

PLAINTIFF'S RESPONSE TO DOCKET ENTRY NO. 43:
RESPONSE OF MARY ROPER TO THE COURT'S ORDER TO SHOW CAUSE REGARDING WHY SANCTIONS SHOULD NOT BE GRANTED

I. Introduction

On July 4, 2014, defendant Mary Roper ("Roper") filed a response to the Court's Order to Show Cause Why Sanctions Should Not Be Granted (hereinafter "Response"). [Doc. 43]. Unfortunately, the Response filed on Ms. Roper's behalf entirely mischaracterizes the procedural history of this case, in addition to citing to inapplicable and irrelevant provisions of law which not only have no bearing on the present case, but which also do not stand for the propositions for which they are cited. In addition, recent actions and concessions made by the East Baton Rouge Parish Attorney's Office cast considerable doubt on the veracity of Defendant's representation that there exists a meritorious defense to Plaintiff's claims. Regrettably, Plaintiff's counsel believes that the factual and legal mischaracterizations that run rampant through Ms. Roper's Response necessitate a response from Plaintiff.

II. Relevant Facts

In her Response, Roper first asserts that Plaintiff's counsel, and counsel for Defendants,

James Hilburn, engaged in "initial discussions" in December of 2013. [Doc. 13] at 2. In fact, Plaintiff's counsel and Hilburn engaged in extensive discussion and correspondence from October, 2013 through December 2013. *See* [Doc. 23-1] at ¶¶6-10. During this time, Plaintiff's counsel attempted to assist Mr. Hilburn in coordinating his defense of the present lawsuit with Plaintiff's criminal prosecution in Baton Rouge City Court. *Id.* As stated in Roper's Response, in furtherance of attempting this coordination, both parties moved the Court for an extension of the scheduling conference ordered by the Court on December 5, 2013. [Doc. 5]. As stated in the motion, additional time was being sought because the City Prosecutor's Office (which is a division of the Parish Attorney's Office) had recused itself from Plaintiff's criminal prosecution, and the status and location of the file containing the criminal charges was unknown. [Doc. 5] at 1. The Court granted the motion to continue the scheduling conference until February 6, 2014, and ordered the parties to submit a joint status report by January 23, 2014. [Doc. 6]. On December 11, 2013, counsel for Plaintiff contacted Mr. Hilburn indicating that no further attempts would be made to coordinate the present action with the criminal proceedings in Baton Rouge City Court, as it did not appear that there was any intent to prosecute the criminal charges. [Doc. 23-3] at 2.

Local Rule 26.2 of the Middle District of Louisiana requires the parties to a civil action to confer prior to participating in the initial scheduling conference with the Court, and further provides that "[a]ny meeting of the parties shall be held in time to permit the report of the meeting to be filed with the court no later than two days prior to the date of the scheduling conference." To this end, on December 11, 2013, Plaintiff's counsel provided Defendants with a partially completed draft of the scheduling status report that was due for submission on January 23, 2014.

See [Doc. 7]. As conceded by Roper in her Response however, "Hilburn temporarily stopped responding to communications from Plaintiff's counsel regarding the rescheduled scheduling conference." [Doc. 43] at 2. As a result, despite Plaintiff's counsel's attempts to confer with counsel for Defendants, and the court-imposed requirement for Defendants to do so, Plaintiff was ultimately forced to file a status report with no input from Defendants. [Doc. 7].

As provided in Roper's Response, Mr. Hilburn subsequently resumed contact with counsel for Plaintiff after submission of the original Status Report to the Court. [Doc. 43] at 2. In discussing proposed deadlines to be submitted to the Court, Hilburn requested that the dates proposed by Plaintiff be extended by 30 days in order to permit new counsel, Tedrick Knightshead to assume the defense of the case. *See* [Doc. 23-5] at 1. Plaintiff conceded to the request, adding 30 days to the originally proposed deadlines in the submission to the Court. *See* [Doc. 9]. The Court subsequently entered a scheduling order using the dates proposed by the parties, under which the parties were required to submit initial disclosures no later than April 14, 2014. [Doc. 10] at 1.

Defendant's Response next asserts that "in the remainder of March and early April, the only activity in the case was a series of show cause orders regarding Plaintiff's failure to timely serve a named defendant" and further asserts that the issue "did not involve the present Defendants." Contrary to this representation, however, filings made with the Court clearly establish that counsel for the parties had previously discussed the possibility of providing a defense for Defendant D. Dewayne White. *See* [Doc. 13] at ¶3. Plaintiff's counsel informed the Court at this time that the Parish Attorney's Office had failed to respond to numerous attempts at communication regarding the provision of a defense for Mr. White, but that no response had been

received. *Id.* at ¶4-5. As a result, Defendant White was dismissed, without prejudice, on April 10, 2014. [Doc. 14]. As detailed in later filings with the Court, the Parish Attorney's Office thereafter continued to be completely non-responsive to numerous and repeated attempts by Plaintiff's counsel to communicate regarding issues in this case. *See* [Doc. 23-1] at ¶¶17-19.

On April 14, 2014, Plaintiff submitted his initial disclosures in compliance with the Court's scheduling order. *See* Plaintiff's Initial Disclosures, attached hereto as Exhibit A. On April 16, 2014, having not received Defendant's initial disclosures, and having failed again in attempts to make contact with the Parish Attorney's Office, Plaintiff requested that the Court enter default in his favor. [Doc. 15]; *see also,* [Doc. 23] at 7 (asserting that setting aside the Clerk's entry of default would prejudice Plaintiff, in part, because "Plaintiff has still not received the disclosures required by the Scheduling Order and the Federal Rules of Civil Procedure"). As represented by Roper in her Response, shortly after the Clerk placed Defendants in default, Mr. Tedrick Knightshead of the Parish Attorney's Office began to participate in the litigation and to respond to Plaintiff's attempts to communicate. [Doc. 43] at 3.

On May 2, 2014, Plaintiff sent e-mail correspondence to Mr. Knightshead inquiring about the status of the initial disclosures that were due for submission on April 14, 2014. *See* May 2, 2014 E-mail Correspondence, attached hereto as Exhibit B. Some two months later, on June 16, 2014, Defendants provided a document entitled "Defendant's Initial Witness and Document List" which purported to satisfy Defendants' initial disclosure requirements under Fed. R. Civ. P. 26. *See* Defendant's Initial Witness and Document List, attached hereto as Exhibit C. Upon receiving the document, Plaintiff's counsel contacted defense counsel to indicate that the disclosures provided were inadequate under Fed. R. Civ. P. 26(a), particularly since the document failed to

identify several individuals appearing in the video of Mr. Taylor's arrest on October 13, 2012. *See* June 16, 2014 correspondence, attached hereto as Exhibit D. Plaintiff has received no additional supplementation or information in response to the June 16th e-mail, other than an oral representation by defense counsel that the issue would be addressed.

Noticeably absent from Roper's statement of facts is any indication of when Mr. Hilburn informed the Parish Attorney's Office of his intention to retire, or the steps undertaken by the Parish Attorney's Office to ensure that this lawsuit was not neglected upon Mr. Hilburn's departure. Rather, the only representation appearing in the Response that even remotely attempts to explain the failure of the Parish Attorney's Office to properly defend this suit states that "[d]uring this time period [March – April], Hilburn retired from the practice of law, but did not withdraw from the matter or contact his anticipated replacement, Knightshead, regarding the matter." [Doc. 43] at 3. Similarly, while making representations regarding the dates upon which Mr. Knightshead "became aware of Plaintiff's action," the statement of facts is also devoid of any explanation or justification for such belated knowledge given the numerous and repeated attempts by Plaintiff's counsel to communicate with the Parish Attorney's Office.

III. Law and Argument

A. Propriety of Seeking Default Judgment

While Defendant Roper's Response is directed only to the Show Cause Order issued by the Court, it also presents a sideways challenge to the Clerk's entry of default, along with the Court's denial of a Motion to set the default aside. Implicit in the Response is the assertion that Plaintiff's counsel's actions in seeking a default under the present circumstances was somehow inappropriate. In particular, the Response asserts that:

- Plaintiff's Motion for Preliminary Default "disregarded the general denial contained in the Status Report Supplement, and incorrectly asserted that Defendant's had not responded to the complaint." [Doc. 43] at 3;
- it is "clear from a consideration of the previously neglected Status Report Supplement that Plaintiff chose to seek a default only ***after*** an 'answer' had been filed."[1] *Id.* at 4 (emphasis in original);
- "it is questionable whether even the statutorily prescribed sanction (default judgment under Rule 55) is available to Plaintiff…" *Id.* at 5;
- "consideration of the Status Report Supplement indicates that the only thing that has 'multiplied' this proceeding is an improvidently filed default motion." *Id.* at 7

Roper's assertion that Plaintiff's counsel acted inappropriately in seeking a default judgment is based entirely upon a single sentence appearing within the Status Report submitted to the Court on March 4, 2014. *See id.* at 3-4.

In effect, Roper argues that it was error for the Clerk to enter default, and for this Court to subsequently deny a motion to set aside that default, given the "general denial" appearing in a Status Report filed some four months after the deadline to file an answer had expired. Defendant's position is plainly incorrect, and the case law cited in support of the argument clearly reflects this fact, as shown below.

In support of her argument that Fed. R. Civ. P. 8(b) requires the Court to consider the lone sentence appearing in the March 4th Status Report an answer sufficient to preclude the entry of default, Roper cites to *Alonso v. Agrigenetics,* 2004 WL 2668801 (S.D. Tex. Nov. 15, 2004).

[1] A mere two sentences before making this representation, Roper concedes that "[i]t is true that no "answer" was filed within the deadline established by Rule 12." *Id.* at 4.

[Doc. 43] at 4. Defendant parenthetically characterizes the holding of this case in the following manner: "statement in pleading that 'I deny any wrongdoing alleged by Plaintiffs in their lawsuit against me' was a sufficient 'answer' to the complaint." *Id.* A review of the *Alonso* order, however, does not support either the characterization given by Defendant, nor her argument that the entry of default in this case was inappropriate.

In *Alonso,* the issue considered by the court was whether a *timely-filed* general denial filed by a *pro se* defendant was sufficient to constitute an answer under Fed. R. Civ. P. 8(b). *Id.* at *2-*4. The court began its discussion by citing the relaxed standard applied by federal courts in interpreting the pleadings of a *pro se* litigant. *Id.* at *2, citing *Haines v. Kerner,* 404 U.S. 519, 520-521 (1972); *Miller v. Stanmore,* 636 F.2d 986, 988 (5th Cir. 1981). The court then cited to Fed. R. Civ. P. 8(b)'s provision providing that "if a defendant '***Intends in good faith to controvert all the averments' of the plaintiff's complaint*** that defendant may make a general denial." *Id.* at *3 (emphasis added). The plaintiffs in *Alonso* argued that the *pro se* defendant's general denial had not been made in good faith as required by Rule 8(b) because the defendant's discovery responses "admitted to several contentions made in the plaintiff's complaint." *Id.* Contrary to Defendant's representation that the *Alonso* court held that the defendant's general denial constituted a sufficient answer to plaintiff's complaint under Rule 8(b), the court actually found precisely the opposite:

> The Court agrees with the plaintiffs. The complaint asserts that Martinez is a farm labor contractor. Martinez's response to an interrogatory admits as much. Nonetheless, Martinez's answer to the plaintiff's complaint consists of: "I deny any wrongdoing alleged by Plaintiffs in their lawsuit against me." ***This is unacceptable pursuant to FRCP 8(b).*** Martinez will be required to conform his answer to the plaintiff's complaint pursuant to the FRCP 8(b) guidelines.

Id, at *3-*4 (emphasis added).

1. Roper Has No Good Faith Basis Upon Which To Assert A General Denial

Just as the *Alonso* court found that the defendant's general denial had not been made in good faith, so does the record in this case reflect the lack of any basis upon which Defendants could submit a general denial pursuant to Fed. R. Civ. P. 8(b). This can be seen most clearly from a review of the late-filed answer submitted by Defendants after default had been entered. *See* [Doc. 19]. The answer, which was subsequently stricken by the Court, indicates that Defendants have never intended in good faith to controvert all of the averments appearing within Plaintiff's complaint. *See id.,* at ¶9, 16, 21, 23, 31, and 36 (admitting the allegations appearing at ¶¶16, 17, 18, 30, 42, 43, 44, 46, 83, and 128 of Plaintiff's complaint). Furthermore, as the filings previously made with the Court indicate, there is no indication that Mr. Hilburn, who drafted the sentence appearing in the March 4 Status Report, intended the Status Report to serve as Defendant's Answer. *See* [Doc. 23-1] at ¶¶11 (stating that counsel for Defendants indicated on December 12, 2013 that an answer had been drafted and would be filed with the Court).

As Defendants had no good-faith basis upon which to assert a general denial of all allegations appearing within Plaintiff's complaint, the lone sentence appearing in the parties' March 4, 2014 Status Report could not possibly be considered an answer under the Federal Rules of Civil Procedure. Rather, as Rule 8(b) provides, Defendants were required to "fairly respond to the substance of the allegation[s]" appearing within Plaintiff's complaint. Fed. R. Civ. P. 8(b)(2). In order to do so, Defendants were required to "either specifically deny designated allegations or generally deny all except those specifically admitted." Fed. R. Civ. P. 8(b)(3). There is no dispute that Defendants failed to take this action as required by the Federal Rules. As a result, Roper is incorrect in her assertion that the entry of default against Defendants was

made in error.

2. Roper Is Not Appearing *Pro Se*

Furthermore, as with *Alonso*, the vast majority of the case law cited by Roper in support of her argument regarding the propriety of the default are distinguishable on the basis that they involve parties representing themselves *pro se.*[2] Despite this fact, the Response makes no indication of the courts' consideration of the parties' *pro se* status, and provides further mischaracterization of the cases cited. For instance, Defendant cites *SEC v. Amerifirst Funding, Inc.*, 2007 WL 4226921 (N.D. Tex. 11/29/2007), which she parenthetically characterizes as holding that "declaration filed by defendant denying fraud allegation sufficient to constitute 'answer' for purposes of default judgment motion." [Doc. 43] at 5. As is clear from a reading of the order, however, it is apparent that the court based its decision on the defendant's *pro se* status:

> When the defaulting party is a pro se defendant, the Court must be especially hesitant to enter a default judgment. As a general rule a district court should grant a default judgment sparingly and grant leave to set aside the entry of default freely when the defaulting party is appearing *pro se*.
>
> …
>
> Although the declaration does not expressly admit the portions of the first amended complaint that Bowden concedes to be true, considering Bowden's *pro se* status and the operation of Rule 8(f), the court liberally construes Bowden's August 21, 2007 declaration to be a Rule 8(b) answer.

SEC v. Amerifirst Funding, Inc., at *4, *8 (citations omitted).

Defendant also cites to *Interscope Records v. Benavides*, 241 F.R.D. 458, 459 (W.D. Tex. 2006) which it parenthetically characterizes as holding that "letter from defendant to Clerk of

[2] The only two cases cited by Roper that do not involve *pro se* parties are *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980) (addressing stipulation of dismissal in open court) and *Torabi v. Gonzales*, 165 Fed. Appx. 326 (5th Cir. 2006) (unpublished and non-precedential decision addressing request for review of Board of Immigration Appeals ruling), which are simply inapposite to the situation presently before the court.

Court stating 'I am denying all charges brought against me' was a sufficient 'answer' for purposes of default judgment motion." Defendant's characterization once again does not comport with the actual order issued by the court. Rather, the *Interscope Records* court stated merely that the *pro se* defendant's "statement that she 'denied all charges' ***may be viewed generously as a general denial*** filed in response to plaintiff's motion for default judgment." *Id.* at 460. The court ultimately determined, however, that the letter filed by the defendant did not even constitute an appearance for purposes of Fed. R. Civ. P 55, let alone an answer sufficient to set aside a default, as Roper has represented:

> In summary, even though defendant had actual notice of the lawsuit in ample time to file an answer, she neglected to do so with no apparent excuse other than her status as a layman. When the defaulting party is a pro se defendant, the court must be especially hesitant to enter a default judgment. As a general rule a district court should grant a default judgment sparingly and grant leave to set aside the entry of default freely when the defaulting party is appearing pro se. However, even pro se litigants must act within the time provided by statute and rules. Additionally, the difficulty and expense of obtaining counsel does not constitute good cause for default, especially in light of the fact that defendant made little effort to explain her situation to the court and no effort to explain her situation to opposing counsel.
>
> While the Court must grant defendant considerable leeway as a pro se litigant, at the same time it cannot excuse her failure to act merely on that basis, which is what she seems to ask. While it is regrettable that defendant was unable to find an attorney to assist her, if the Court were to excuse her failure to answer on this ground, then the default option would be an empty threat to any pro se defendant who neglected to file an answer.

Id, at 461-462 (citations omitted).

Finally, Defendant cites *Patton v. Jefferson Sheriff's Office,* 1997 U.S. Dist. LEXIS 308 (E.D. La. 1/6/97) and parenthetically characterizes the case as holding that "letters filed with the court by defendants denying responsibility for plaintiff's damages due to allegedly false arrest was a sufficient "answer" for purposes of default judgment motion." [Doc. 43] at 5. In fact, the

order Defendant cites relates to a motion to recuse filed by the plaintiff, and discusses the answers filed by the defendants only in passing. The entirety of the statements appearing in *Patton* upon which Defendant relies in support of her argument are as follows:

> On November 7, 1996, the undersigned magistrate judge ordered defendants Thomas Reed, Anita Reed, Dorothy Castanedo, Tameka Roberts, Greg Noble and Terry Graffed to file an answer and an opposition to the motion for default. In response, Thomas and Anita Reed filed letters with the court in which they denied any responsibility for damages to Patton and in which they denied ever filing charges against or testifying against Patton. Tameka Roberts filed two letters denying the charges in Patton's complaint. Dorothy Castanedo, Greg Noble, and Terry Graffed complied by filing answers. The undersigned issued a minute entry construing the letters filed by the Reeds and by Roberts as adequate answers to Patton's complaint as well as oppositions to Patton's motion for default.

Id. at *3-*4. The *Patton* case mentions the defendant's timely filing of letters in response to the court's orders only in providing the procedural history of this case. It does not purport to address the contents of the filings made by the parties, nor the reasoning under which the court determined that the filings comprised an adequate answer to the plaintiff's complaint. In addition, it is clear from the *Patton* court's description that – unlike the sentence appearing in the March 4th Status Report -- the letters submitted by the defendants were not simply general denials, but rather addressed the specific allegations appearing in the plaintiff's complaint.

As admitted in her Response, Roper does not appear before this court *pro se,* but is rather represented by experienced counsel from the Parish Attorney's Office. As a result, the cases cited in Defendant's Response that apply the lenient standards applied to *pro se* litigants are inapposite. *See Anderson v. Bristol, Inc*., 936 F. Supp. 2d 1039, 1046 (S.D. Iowa 2013) ("[w]hile the Court grants leniency to *pro se* litigants and may excuse failures to comply with local rules, the same leniency cannot and should not be applied to experienced attorneys"); *see also Morris*

v. Wyeth, Inc., 2012 U.S. Dist. LEXIS 23120, *11 (W.D. La. Feb. 21, 2012) (declining to permit amendment to complaint because plaintiffs were not "*pro se* plaintiffs unfamiliar with the rules of civil procedure"); *Del Valle v. PLIVA, Inc.*, 2011 U.S. Dist. LEXIS 153473, 21 (S.D. Tex. Dec. 21, 2011) (same). Roper has provided absolutely no justification for her argument that this Court erred in failing to treat a single sentence appearing in the March 4th Status Report as an adequate answer to Plaintiff's complaint.

3. The Status Report At Issue Was Not Filed Within The Deadlines Established by Rule 12

Defendant Roper's argument that the sentence appearing in the March 4th Status Report comprised an answer sufficient to satisfy the Federal Rules of Civil Procedure also fails to consider the timeliness of this submission. As previously addressed by Plaintiff, the deadline for Defendants to answer Plaintiff's complaint in this case was November 9, 2013. *See* [Doc. 24-1] (indicating that request for waiver of service was sent September 9, 2013, and that Fed. R. Civ. P. 12(a)(1)(A)(ii) required Defendants to serve an answer within 60 days after request was sent). Fed. R. Civ. P. 6(b)(1)(B) gives the Court authority to extend the time in which Defendants had to answer Plaintiff's complaint "for good cause … on motion made after the time has expired if the party failed to act because of excusable neglect." *See* [Doc. 24-1] at 2-3; citing *Moore v. BASF Corp.*, 2012 U.S. Dist. LEXIS 145135 (E.D. La. Oct. 9, 2012).

Despite the fact that the Court has already stricken one answer filed on Defendant's behalf due to the failure to seek leave of court, or otherwise meet the provisions of Rule 6, Roper's Response fails entirely to address the identical issue which arises in connection with her current argument. The March 4th Status Report was filed some four months after the deadline for Defendants to answer Plaintiff's complaint had passed. Once the deadline had expired,

Defendants were required to seek leave of court in order to answer the complaint, at the peril of having any answer stricken by the court if they did not do so. *Id.;* citing *DirecTV, Inc. v. Young,* 195 Fed. Appx. 212, 215 (5th Cir. 2006) (unpublished). Defendants failed to seek leave, have failed to establish "good cause" to extend the deadline, and have likewise failed to establish that the failure to meet the deadline was the result of "excusable neglect." As a result, Defendant Roper's contention that default was erroneously entered in this case, or that Plaintiff's counsel acted inappropriately in obtaining the default, are completely devoid of merit.

B. The Court's Authority

In her Response, Roper additionally argues that the Court is without authority or justification to impose sanctions upon her. While Plaintiff would prefer not to debate the issue, certain representations made by Defendant Roper in support of her contention counsel in favor of a response.

1. Defendants Violated Orders of the Court

In her Response, Roper asserts that "the record does not reflect, that any Defendant or their counsel has violated any order of the Court." [Doc. 43] at 8. Thus, according to Roper, "the Court can impose sanctions only if authorized to do so under Federal Rule of Civil Procedure 11, 28 U.S.C. §1927, or its inherent power." *Id.* at 6 (citation omitted). Roper is mistaken that Defendants and/or their counsel have not violated orders of this Court. Specifically, as set forth above, on December 12, 2013, Magistrate Judge Bourgeois issued an Order directing the parties to submit a joint status report by January 23, 2014. *See* [Doc. 6]. Despite this fact, Defendants and/or their counsel failed to confer with counsel for Plaintiffs, or submit their portions of the required report. *See* [Doc. 7]. In addition, Defendants failed to

comply with the provision of the Court's Scheduling Order which required the parties to exchange initial disclosures by April 14, 2014. Thus, Roper's representation that Defendants and their attorneys engaged in no actions that violated orders of this Court is incorrect.

2. Defendants Have Introduced Unnecessary and/or Meritless Issues Into This Litigation

Roper's Response also asserts that "[t]here is no evidence that any of Defendants' counsel has introduced unnecessary and/or meritless issues in this litigation, much less that the entire defense of this case has been some kind of pointless sham." [Doc. 43] at 7. While Plaintiff's counsel certainly wishes this were true, unfortunately, there is evidence to the contrary. Specifically, on June 25, 2014, representatives of the Parish Attorney's Office[3], including Roper, appeared before the Baton Rouge Metropolitan Council seeking the repeal of Baton Rouge Code of Ordinances 13:95.3 (the ordinance at issue in this lawsuit). *See* Metro Council 6/25/2014 Administrative Matters Agenda, attached hereto as Exhibit E; archived video of Administrative Matters portion of June 25, 2014 Metro Council meeting, accessible at: http://batonrougela.swagit.com/play/06252014-813.[4]

Appearing before the Metro Council, the Parish Attorney's Office recommended the repeal of §13:95.3 because it was "redundant to another ordinance." June 25th Metro Council Meeting at 5:55. According to the Parish Attorney, in 1985, the United States District Court for the Western District of Louisiana "ruled that a state statute which had identical provisions [to §13:95.3] was unconstitutional…" *Id.* at 6:16.[5] Mr. Gremillion indicated that another ordinance

[3] Mr. Frank J. Gremillion also appeared on behalf of the Parish Attorney's Office. Subsequent to his appearance before the Metropolitan Council, Defendants filed a motion seeking to enroll Mr. Gremillion in this case. *See* [Doc. 39].

[4] The portion of the video addressing the repeal of §13:95.3, appears in the section titled "Items 11 & 12," beginning at approximately 4:54 and ending at approximately 20:46.

[5] Citing *Ringe v. Romero*, 624 F. Supp. 417 (W.D. La. 1985).

- §13:95.4 - had been enacted by the 1986 Metro Council in an attempt to cure the constitutional deficiencies present in §13:95.3. *Id.* at 7:08. Mr. Gremillion explained that §13:95.4 left out "the provision that you would violate the statute even if you were on the parking lot of such a place, ***which is really too broad***." *Id.* at 7:40. Mr. Gremillion indicated that the Parish Attorney's Office was "simply recommending that the Council repeal the earlier [ordinance], which the 1986 Council apparently intended to do, and clear up that problem." *Id.* at 8:36.

Upon questioning by Council Member John Delgado on whether there was any "pressing need" to amend the ordinance since the issue had been raised as a last-minute administrative matter, Mr. Gremillion candidly admitted that Plaintiff's lawsuit had generated the impetus for the Parish Attorney's Office to take action with respect to the ordinance. *Id.* at 9:07. In response to Council Member Delgado's statement that "changing it after the fact is not going to unring the bell," Mr. Gremillion stated that repealing the ordinance would place the Parish Attorney's Office "in a better position" because:

> **"I believe, and we all at the office, after checking it out, believe that the continued existence of that particular section, that is, the earlier one, is simply a mistake, and it should be corrected."**

Id. at 9:42. When Mr. Delgado expressed concern over the fact that §13:95.4 did not prohibit the possession of weapons in "liquor stores" Mr. Gremillion suggested the possibility of amending the ordinance, then commented "but you've also got Wal-Mart and all of these other stores that also sell liquor… I don't know if you really want to go there." *Id.* at 11:15. Ms. Roper then addressed the Council and after discussing certain procedural issues stated:

> If we want to come back and amend it rather than just deleting it, you could take out the provision regarding the search – the consent to search – and take out the provision regarding the parking lot, which presents a problem. If you have a lawful firearm in your car and you pull up in the Winn-Dixie and they sell alcohol, you are in violation under this.

Id. at 11:46.

Later, in response to Council Member C. Denise Marcelle's inquiry as to whether there were currently any individuals being prosecuted under §13:95.3, Mr. Gremillion stated that he was aware of only one – Plaintiff in this action. *Id.* at 14:15. When Marcelle suggested that there might be other individuals who had been arrested under the ordinance of which Gremillion might not be aware of since they had not yet been to court, Gremillion stated that it was possible, but that he "wouldn't know about them until a lawsuit was filed on [the arrest], you see…" *Id.* Later in her questioning, Council Member Marcelle asked "… did they have a right to search -- in the parking lot?" Mr. Gremillion answered:

> No. That's the central problem in this case. The courts have held consistently that the Constitution requires that a search be with a warrant, or with probable cause, or consent. This ordinance says when you walk into that place, you automatically consent to be searched… Back in '62 that was probably permissible because it – I don't know – people weren't – it wasn't a problem at that time. But now, the courts have held consistently…

Id. at 16:06. Ultimately, the issue of §13:95.3's repeal was deferred until the Metro Council meeting of July 23, 2014.

Despite the concessions made by the Parish Attorney's Office when appearing before the Metro Council during their June 25th meeting, on July 2, 2014, Defendants filed briefing with Court arguing that this Court should uphold §13:95.3 because declaring the ordinance unconstitutional would "frustrate[] the intent of the elected representatives of the people." [Doc. 36] at 5; quoting *Regan v. Time, Inc.*, 468 U.S. 641, 652-53 (1984). Clearly, the argument made to this Court is at direct odds with the Parish Attorney's representation to the Metro Council that the 1986 Metro Council actually intended to repeal the ordinance when it enacted §13:95.4. The result is that contrary to Roper's representation otherwise, there exists substantial evidence that

resulting in the needless multiplication of these proceedings.

3. Roper Has Responsibilities as a Party to this Suit

Finally, while Roper argues that the Court lacks authority to impose sanctions upon her for the actions of the attorneys representing her, she fails to consider her duties as party Defendant. Specifically, Fed. R. Civ. P. 26(f)(2) provides:

> In conferring [pursuant to Fed. R. Civ. P. (f)], the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan.

The suggestion in Roper's response that her participation in this litigation would be inappropriate given her status as a defendant fails to consider the distinct duties the Federal Rules impose on attorneys and litigants. *See id.;* [Doc. 43] at 1. While Roper is correct that attempting to act as *both* a lawyer *and* a litigant may present conflict of interest issues, the potential for such conflicts does not excuse Roper's failure to participate *either* as an attorney *or* as a litigant. While Roper touts her complete lack of involvement in this suit as evidence arguing against the imposition of sanctions, given the responsibilities imposed upon her by, *inter alia,* Fed. R. Civ. P. 26(f)(2), her failure to participate arguably counsels in favor of the opposite result.

IV. Conclusion

As shown above, the actions of Defendants and their counsel in this case amount to much more than the mere "failure to meet a Rule 12 deadline" as Roper asserts in her response. While Plaintiff takes no position on whether the Court should impose sanctions on any Defendant or attorney, the Court deserves to have an accurate statement of facts and appropriate legal argument in deciding the issue. To that end, this response seeks to clarify and correct what

Plaintiff perceives to be both factual and legal mischaracterizations contained within Defendant Roper's Response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record through a Notice of Electronic Filing generated by the Court's CM/ECF system on this, the 7th day of July, 2014.

s/ Terrence J. Donahue, Jr.
Terrence J. Donahue, Jr.

IN THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	§	CIVIL ACTION
	§	
Plaintiff,	§	
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VS.	§	
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THE CITY OF BATON ROUGE, ET AL.	§	NO. 13-579-BAJ-RLB
	§	
Defendants.	§	

PLAINTIFF'S INITIAL DISCLOSURES

In accordance with the Scheduling Order issued by this Court [Doc. 10], Plaintiff Ernest Taylor hereby serves upon Defendants the following Initial Disclosures required by Fed. R. Civ. P. 26(a)(1). Plaintiff reserves the right to supplement his answers pursuant to the Federal Rules of Civil Procedure.

I. Individuals With Discoverable Information

The name, and if known, the address, and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information. Plaintiffs reserve the right to supplement this list upon further investigation.

A. Individuals Known to Plaintiffs Likely to Have Discoverable Information.

1. Ernest Taylor
   4424 McClelland
   Baton Rouge, LA 70806

   Mr. Taylor possesses information regarding the events of October 13, 2012, including his arrest and the seizure of his firearms. Mr. Taylor also possesses information regarding the amount and type of damages he has suffered, including the deprivation of his lawfully held firearms, repeated absences from work to contest charges relating to his firearms, and the accrual of extensive legal fees.

Plaintiff

2. D. DeWayne White
   Former address:
   824 Shadybrook Drive
   Baton Rouge, LA 70816
   Current address unknown

   Mr. White possesses information regarding the training given to officers of the Baton Rouge Police Force, the enforcement of municipal ordinances of Baton Rouge, and the practices of the Baton Rouge City Police Department in general, including the confiscation and retention of citizens' firearms for purported ordinance violations.

   Former Chief of the Baton Rouge City Police

3. Carl Dabadie, Jr.
   Current Chief of the Baton Rouge City Police
   c/o Mayor Kip Holden
   222 St. Louis Street
   3rd Floor, City Hall
   Baton Rouge, LA 70801

   Mr. Dabadie possesses information regarding the training given to officers of the Baton Rouge Police Force, the enforcement of municipal ordinances of Baton Rouge, and the practices of the Baton Rouge City Police Department in general, including the confiscation and retention of citizens' firearms for purported ordinance violations.

   Defendant

4. Mary E. Roper
   East Baton Rouge Parish Attorney
   c/o Mayor Kip Holden
   222 St. Louis Street
   3rd Floor, City Hall
   Baton Rouge, LA 70801

   Ms. Roper possesses information regarding the judicial enforcement of the City of Baton Rouge's municipal ordinances, the prosecution of individuals accused of violating these ordinances, and the practices of the East Baton Rouge Parish Attorney's Office in relation to the confiscation and retention of citizens' firearms for purported ordinance violations.

   Defendant

5. Lisa Freeman

Baton Rouge City Prosecutor
c/o Mayor Kip Holden
222 St. Louis Street
3rd Floor, City Hall
Baton Rouge, LA 70801

Ms. Freeman possesses information regarding the judicial enforcement of the City of Baton Rouge's municipal ordinances, and the prosecution of individuals accused of violating these ordinances in Baton Rouge City Court. Ms. Freeman also possesses information regarding the practices of the Baton Rouge City Prosecutor's Office in relation to the confiscation and retention of citizens' firearms for purported ordinance violations.

Defendant

6. Devon Bardin
Assistant Baton Rouge City Prosecutor
c/o Mayor Kip Holden
222 St. Louis Street
3rd Floor, City Hall
Baton Rouge, LA 70801

Ms. Bardin possesses information regarding the City of Baton Rouge's prosecution of Plaintiff, Ernest Taylor, for violation of §13:95.3 of the Baton Rouge Code of Ordinances.

Assistant Prosecutor for the City of Baton Rouge

7. Cpl. Patrick Wennemann
Baton Rouge City Police Officer
c/o Mayor Kip Holden
222 St. Louis Street
3rd Floor, City Hall
Baton Rouge, LA 70801

Corporal Wenneman possesses information regarding the events of October 13, 2012, including Plaintiff's arrest and the seizure of his firearms. Officer Wenneman also possesses information regarding the training given to officers of the Baton Rouge Police Force, the enforcement of the municipal ordinances of Baton Rouge, and the practices of the Baton Rouge City Police Department in general, including the confiscation and retention of citizens' firearms for purported ordinance violations.

Defendant

8. Off. James Thomas
Baton Rouge City Police Officer

c/o Mayor Kip Holden
222 St. Louis Street
3rd Floor, City Hall
Baton Rouge, LA 70801

Officer Thomas possesses information regarding the events of October 13, 2012, including Plaintiff's arrest and the seizure of his firearms. Officer Wenneman also possesses information regarding the training given to officers of the Baton Rouge Police Force, the enforcement of the municipal ordinances of Baton Rouge, and the practices of the Baton Rouge City Police Department in general, including the confiscation and retention of citizens' firearms for purported ordinance violations.

Defendant

9. Jane Doe
Unknown female appearing on arrest video
Unknown identity and whereabouts

An unknown female individual was also present during plaintiff, Ernest Taylor's, arrest on October 13, 2012. This individual will have information regarding the events of October 13, 2012, including Plaintiff's arrest and the seizure of his firearms. The individual may also have additional information that may be revealed once her identity has been disclosed.

10. Agents and Employees of
The City of Baton Rouge
c/o Mayor Kip Holden
222 St. Louis Street
3rd Floor, City Hall
Baton Rouge, LA 70801

Other employees and agents of the City of Baton Rouge possess relevant and probative information relating to the events of October 13, 2012 and the enforcement and retention of legally possessed firearms pursuant to §13.95.3 of the Baton Rouge Code of Ordinances.

11. Expert witnesses retained by Plaintiff.

B. Defense witnesses/ Expert witnesses retained by Defendants.

Plaintiffs reserve the right to supplement this section as necessary.

II. Relevant Documents & Tangible Things

The following is a list of documents, data compilations, and tangible things in Plaintiffs' possession, custody, or control, described by category and location, that Plaintiff may use to support his claims or defenses.

1. Documents:

   a. Documentation provided to Ernest Taylor by the City of Baton Rouge and its actors, including notices to appear for trial;

   b. Records establishing Ernest Taylor's lawful possession of the firearms confiscated and still in the possession of the Baton Rouge City Police Department;

   c. Plaintiff Ernest Taylor's wage information;

   d. Documents showing the amount of legal fees incurred by Ernest Taylor in defending the firearm-related criminal claims in Baton Rouge City Court;

   e. Documents establishing the work performed by Plaintiff's counsel in connection with the present suit for the purpose of determining the reasonable attorney's fees to which plaintiff may be entitled.

III. Computation of Damages

Plaintiff, Ernest Taylor, is entitled to be compensated for the physical and emotional injuries he suffered as a result of his arrest on October 13, 2012. Mr. Taylor is also entitled to lost wages arising from his unlawful arrest and imprisonment, in addition to those wages lost as a result of Mr. Taylor being required to attend court on several occasions to defend himself against the firearm-related charges. Mr. Taylor is also entitled to be compensated for the deprivation of his lawfully-possessed firearms, in violation of his Constitutional rights thereto, for a period currently spanning more than eighteen months. It is likely that experts will be retained to evaluate and testify regarding these damages.

Mr. Taylor is additionally entitled to recover the costs and attorney's fees incurred in defending the firearm related criminal charges, as well as those incurred through the vindication

of his rights through the present suit. These costs and fees currently exceed fifteen thousand dollars ($15,000).

Finally, Mr. Taylor is also entitled to punitive damages against the City of Baton Rouge and its individual actors for the clearly unlawful confiscation and retention of his legally-possessed firearms in violation of his Constitutionally-protected rights. It is likely that experts will be retained to evaluate and testify regarding these damages.

IV. Insurance Agreements

Not applicable.

The foregoing disclosures are based upon the information currently and reasonably available to Plaintiff. Plaintiff reserves the right to identify and to rely upon additional witnesses and documents in support of his claim or defenses as discovery progresses. Furthermore, where appropriate, requested documents will be produced for defendants' inspection upon request. Plaintiff reserves the right to supplement this list upon further investigation.

CHRISTOPHER D. GLISSON
Louisiana State Bar No. 28200
TERRENCE J. DONAHUE, JR.
Louisiana State Bar No. 32126
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Telephone (225) 344-3555
Facsimile (225) 344-3666
Email: chris@mcglynnglisson.com
Email: joe@mcglynnglisson.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2014, a copy of the foregoing Initial Disclosures was served on counsel for Defendants by placing a true and correct copy in the U.S. Mail, First Class, for delivery to:

Office of the Parish Attorney
East Baton Rouge Parish
Attn: Mr. Tedrick Knightshead
222 Saint Louis Street, Room 902
Baton Rouge, LA 70821

Terrence J. Donahue, Jr.

Joe Donahue

From: Joe Donahue
Sent: Friday, May 02, 2014 10:11 AM
To: 'Tedrick Knightshead'
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor

Tedrick,

First and foremost - have you learned anything about the events of Tuesday night/ Wednesday morning?

Regarding Mr. Taylor's first arrest by Cpl. Wennemann, as with the search in *Garrett,* the sole basis for the seizure of Mr. Taylor's firearms was the ordinance - the traffic stop did not allow for any such seizure. In addition, the AG's office has dismissed ALL charges against Mr. Taylor – including the traffic offense (they did not even attempt to defend any of the charges in response to a motion to quash). It is also very clear from the video of the arrest that Mr. Taylor was arrested and placed into custody because of the guns – and ONLY because of the guns.

With respect to immunity, I do not believe there is any meritorious argument there – you may want to review the allegations in the complaint. *Imbler* would not provide Ms. Roper or Ms. Freeman with immunity under the allegations here. I don't know what basis you believe the police officers would be entitled to immunity, but I would again refer you to the complaint which describes a recent 1983 case against police officers in Louisiana that was later affirmed by the Fifth Circuit. I believe the caption was Club Retro or something similar. I feel confident that there are meritorious arguments against immunity with respect to all of the named defendants. The complaint was crafted very carefully.

With respect to settlement, as I stated before, any agreement would require a consent judgment or something similar to prevent this situation from recurring in the future. There is no room for negotiation on this point. This suit is for injunctive and declaratory relief, in addition to damages. If we can reach agreement on the injunctive/declaratory portion, then we can discuss settling the damages portion.

Lastly, in my mind, nothing changes with the court's ruling on your motion to set aside the default. If it is denied I will move forward with confirming the default. If the motion is granted, I will move for a preliminary injunction seeking to have the ordinance declared unconstitutional. From my point of view, it's six of one, half a dozen of the other. The main issue I would anticipate arising from setting the default aside would be an abbreviated discovery schedule due to the time lost from the failure to plead. In that respect, you stated on Monday that you had completed and signed the initial disclosures that were due on April 14, but I have not yet received them. Can you provide me with an update on the status of those as well?

I am shooting to file my response before the end of the day, so if there is anything you would like to discuss before I file, please let me know by early afternoon. Thanks,

-Joe

Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: Tedrick Knightshead [mailto:TKnightshead@brgov.com]
Sent: Friday, May 02, 2014 9:25 AM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor

Sounds like a plan. Although I disagree with your assessment of the facts in the case at present and Garret. In Garret the sole basis for the search was the City ordinance. In the present case, there was a traffic stop, then officers noticed the weapons in plain view. Those facts seem to differ greatly. Additionally, if you are wrong as to whether the judge grants the default, then you may be looking at a case with immunity on behalf of the police and the prosecutors. Also, I asked you to give me a reasonable settlement offer, which I have not received. So, maybe after the court rules, either you or myself will be in the position to tell the other side what he wants.

Please do not hesitate to contact me. Awaiting your reply

From: Joe Donahue [mailto:joe@mcglynnglisson.com]
Sent: Thursday, May 01, 2014 3:43 PM
To: Tedrick Knightshead
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor

Thank you for following up, Tedrick.

Perhaps we read *Garrett* differently, but you are mischaracterizing both our previous conversations, and the allegations appearing in Mr. Taylor's complaint. The complaint sets forth a rather detailed history of the applicable law on pages 9-14. With respect to *Garrett,* there is no suggestion that the ordinance had been declared unconstitutional. Rather, it states in para. 55:

On December 28, 1984, the Louisiana First Circuit Court of Appeal determined that reliance upon subsection (b) of the Baton Rouge Code Sec. 13:95.3 (the ordinance), when applied to individuals who were located on the "premises", but not actually inside the establishment that served or sold alcoholic beverages, violated the individual's rights under the Fourth and Fourteenth Amendments to the United States Constitution. *State v. Garrett,* 461 So.2d 651 (La.App. 1 Cir. 1984).

I believe that the above is an accurate characterization of *Garrett,* and I fail to see any distinction between the unconstitutional search in *Garrett* and the unconstitutional seizure of Mr. Taylor's firearms in this case. Moreover, the level of proof you suggest is required before an unconstitutional law should no longer be enforced or prosecuted (a judicial decree explicitly declaring the offensive law unconstitutional) *is precisely the reason that this lawsuit exists.* Any settlement agreement will, of necessity, require a consent judgment or its equivalent stating that 13:95.3 is no longer good law, and that the city and its actors will no longer enforce the law or prosecute individuals for its violation.

If we are able to agree on that point, then perhaps we can discuss the potential for settlement. At present, however, my primary concern is for Mr. Taylor's safety and to prevent any harassment or retribution. Have you been able to follow up regarding the incident with Cpl. Wennemann that occurred Tuesday night?

Lastly, any other arguments you present (immunity, etc.) are currently beside the point. All of the individuals you represent are currently in default. Given the arguments appearing in your e-mail, I don't think it likely that we will be able to resolve this case prior to the time when my response is due, so I will move forward with opposing the motion to set the default aside.

Feel free to contact me if you would like to discuss further. Thanks again,

-Joe

Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: Tedrick Knightshead [mailto:TKnightshead@brgov.com]
Sent: Thursday, May 01, 2014 12:32 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: Ernest Taylor

This email is a follow-up to our conversation on Monday, wherein; I stated that I would review the file, since it had not been assigned to me, and contact you. In our discussion and in your complaint, you provide that the ordinance had been declared unconstitutional on December 28, 1984. You advised me to review **State v. Garrett**, 461, So. 2nd 651. I reviewed the case, but it does not address the constitutionality of Baton Rouge City Ordinance 13:95.3. The court in **Garrett**, was not asked to determine if the ordinance was unconstitutional. The defendant urged one assignment of error. The court was to determine if the trial court erred in finding that the warrantless search of defendant was lawful under provisions of Baton Rouge City Ordinance 13:95.3 Maybe, I recorded the wrong case, but I still don't have any case law that declares the ordinance unconstitutional. Many of your allegations provide that the ordinance was declared unconstitutional but it appears that no court has declared it unconstitutional. The granting of a motion to suppress does not declare a ordinance unconstitutional.

Additionally, Lisa Freeman, Mary Roper have prosecutorial immunity. Specifically, the Supreme Court held that prosecutors are absolutely immune from civil liability in 1983 actions when the actions complained of are "intimately associated with the judicial phase of the criminal process… in initiating a prosecution and in presenting the State's case." **Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L.Ed.2d 128 (1976)**.

That being said, I have a responsibility to present any reasonable offer to the committee for resolution. If your client wishes to make a reasonable offer to resolve this matter, I will present it to the committee. Awaiting your reply.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR

VERSUS

THE CITY OF BATON ROUGE, ET AL

CIVIL ACTION

NO. 13-579-BAJ-RLB

DEFENDANT'S INITIAL WITNESS AND DOCUMENT LIST

NOW COME defendants, defendants The City of Baton Rouge; former Baton Rouge Rouge Chief of Police Donald Dewayne White ("White"), current Baton Rouge Chief of Police Carl Dabadie, Jr. ("Chief Dabadie"), East Baton Rouge Parish Attorney Mary Roper ("Roper"), Baton Rouge City Prosecutor Lisa Freeman ("Freeman"), Baton Rouge Police Officer Patrick Wennemann ("Wenneman"), Baton Rouge Police Officer James Thomas ("Thomas"), and a female Baton Rouge Police Officer, referred to as Jane Doe ("Jane Doe") who pursuant to FRCP Rule 26 submit the following as a list of witnesses and documents they may utilize at trial:

1. **WITNESS LIST**:

   A. Baton Rouge City Police Department Chief of Police Carl Dabadie, 704 Mayflower Street, Baton Rouge, Louisiana 70802, re: defendant;

   B. East Baton Rouge Parish Attorney Mary Roper, 222 St. Louis Street, Baton Rouge, Louisiana 70802, re: defendant;

   C. Baton Rouge City Prosecutor Lisa Freeman, 222 St. Louis Street, Baton Rouge, Louisiana 70802, re: defendant;

D. Baton Rouge City Police Department Officer Patrick Wennemann, 704 Mayflower Street, Baton Rouge, Louisiana 70802, re: defendant;

E. Baton Rouge City Police Department Officer James Thomas , 704 Mayflower Street, Baton Rouge, Louisiana 70802, re: defendant; and

F. Any and all witnesses listed by any other party hereto.

2. DOCUMENT LIST

A. Baton Rouge City Police Department Reports bearing file number 10-1066939.

B. In-car camera and video recordings of the incident at issue herein.

C. Any documents listed by any other party hereto.

RESPECTFULLY SUBMITTED:

Tedrick K. Knightshead
Special Assistant Parish Attorney
La. Bar Roll No. 28851
10500 Coursey Blvd., Suite 205
Baton Rouge, LA 70816
Telephone: (225) 389-8730
Facsimile: (225) 389-8736

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR

VERSUS

THE CITY OF BATON ROUGE, ET AL

CIVIL ACTION

NO. 13-579-BAJ-RLB

CERTIFICATE

I hereby certify that a copy of the foregoing has this day been mailed, postage prepaid, to Mr. Terrance "Joe" Donahue, Jr., **MCGLYNN, GLISSON & MOUTON**, 340 Florida Street, Baton Rouge, Louisiana 70801.

Baton Rouge, Louisiana this **16th** day of **June**, 2014.

Tedrick K. Knightshead

Joe Donahue

From: Joe Donahue
Sent: Monday, June 16, 2014 3:48 PM
To: 'Tedrick Knightshead'
Cc: Lawclerk1
Subject: RE: Initial Disclosures
Attachments: Plaintiff's Initial Disclosures.pdf

Tedrick,

The document you have attached is an "initial witness and document list" which purports to list witnesses and exhibits your clients anticipate using at trial, but which does not address any of the items required by Fed. R. Civ. P. 26(a) for initial disclosures. To date, I have not received **any** of the disclosures required by that rule, in spite of specific requests that they be provided – particularly with respect to the identification of all individuals appearing in Mr. Taylor's arrest video. Plaintiff's initial disclosures were sent by U.S. Mail on April 14 (the date the disclosures were due under the scheduling order), and a scanned copy is attached.

Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: Tedrick Knightshead [mailto:TKnightshead@brgov.com]
Sent: Monday, June 16, 2014 3:22 PM
To: Joe Donahue
Cc: Lawclerk1
Subject: Initial Disclosures

See attached. I know I sent this to you in April, but I am re-sending since I did not receive your initial disclosures. We have had some computer problems, so you might have sent yours and I just didn't receive them. If so, please re-send them.

ADMINISTRATIVE MATTERS
Metropolitan Council Meeting
Wednesday, June 25, 2014

11. ADMINISTRATIVE MATTERS:

A. INTRODUCTIONS:

1. Authorizing the Metropolitan Council to rescind resolution 49105 adopted January 11, 2012, and to declare the immovable property and attachments thereto located near the Martin Luther King Community Center, being Lot 1, Square 6, Greenville Extension, located in Sections 77 & 78, T-7-S, R-1-E, Greensburg Land District, Parish of East Baton Rouge, as Surplus Property, not needed for a public purpose, and authorizing the Mayor President to enter into a Cooperative Endeavor Agreement with The East Baton Rouge Parish Redevelopment Authority to transfer unto the East Baton Rouge Parish Redevelopment Authority said immovable property. By: Mayor-President.

Introduce for public hearing on July 23, 2014

B. ITEMS:

1. Authorizing the Mayor President to execute Supplemental Agreement No. 6 to the contract with Neel-Schaffer, Inc., to provide engineering, construction administration, and inspection services in connection with the Baton Rouge Computerized Signal Synchronization System Phases IV and V being , City/Parish Project No. 01-TS-US-0005, State Project No. H.004077 (formerly 700-17-0172), Federal Aid Project No. CM-5006(042) in a supplemental amount not to exceed $207,820.00. Funding for this Supplemental Agreement being 80% federal with a required 20% local match (Account No. 341.7548492.652310.0485300) By: Director of Public Works.

2. Amending Title 13 (Criminal Law) of the Code of Ordinances of the City of Baton Rouge and Parish of East Baton Rouge, so as to delete Section 13:95.3 (Possession of weapons where alcoholic beverages are sold and/or consumed). By: Parish Attorney.