

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

ERNEST TAYLOR

CIVIL ACTION

VERSUS

NO. 13-579-BAJ-RLB

THE CITY OF BATON ROUGE, ET AL

**RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT JUDGMENT**

MAY IT PLEASE THE COURT:.

PRELIMINARY STATEMENT

Defendants, the City of Baton Rouge, Mary Roper, Carl Dabadie, Lisa Freeman, PatrickWennean and James Thomas were all named in a suit stemming from the arrest of Ernest Taylor.

On October 22, 2013, James L. Hilburn, of the East Baton Rouge Parish Attorney's office waived service on behalf of the defendants. On December 4, 2013, counsel for plaintiff filed a Motion to Continue Scheduling Conference. (Ex.1) The motion provides that both parties are working to assess the case and determine the items that need to be addressed in the scheduling conference. The motion by plaintiff's counsel, never alludes to the fact that an answer had not been filed. Nor does assert that an answer was requested. It merely provides that the counsel for the parties are "working."

On December 13, 2013, at approximately 11:02 a.m., counsel for plaintiff emailed the

James Hilburn advising that the motion to continue was granted by the court. Mr. Donahue further provides that “Status report now due January 23– don’t hurt yourself trying to get something down before Santa arrives.” (Ex 2) In none on the emails between Mr. Hilburn and Mr. Donahue, was Mr. Hilburn ever advised that his answer was overdue.

James Hilburn emailed Mr. Donahue on February 28, 2014, advising that the computers in the parish attorney’s office on Coursey “would only work sporadically for over a month. Mr. Hilburn further advised that the computers were supposedly fixed, but were acting up earlier today. (Ex.4) This email was in response to Mr. Donahue providing James with an updated version of the status report. That email did not include any requests for an answer, nor did it provide that a default was forthcoming.

Mr. Donahue emailed another copy of the status report to Mr. Hilburn on March 5, 2014. Mr. Hilburn responded on the same day, advising that he had corrected 2 typos on pages 2 and 4. Mr. Hilburn further provided that Tedrick Knightshead will be taking over this file. James suggested to Mr. Donahue that the deadlines should be pushed back thirty days to allow Mr. Knightshead the opportunity to take over the file and conduct discovery. (Ex. 5) Mr. Donahue did not object, nor did he inquire as to Mr. Knightshead’s email address or contact information.

On April 9, 2014, Mr. Donahue filed a notice of voluntary dismissal of defendant Dwayne White. Counsel provides in his motion that he has been in contact with James Hilburn and that Mr. Hilburn would not waive service on Mr. White. He further provides

that “undersigned counsel and Mr. Hilburn (have) engaged in numerous conversations regarding various issues in the case, including the potential representation of White by the Parish Attorney.” He further provides that in February or March of 2014, Mr. Hilburn informed counsel that he no longer was serving as an Assistant Parish Attorney, and that this case would be handled by Mr. Tedrick Knightshead, another Assistant Parish Attorney, going forward.”

Mr. Donahue states that “undersigned counsel for plaintiff has attempted on numerous occasions to contact Mr. Knightshead regarding this case, and in particular, to determine whether the Parish Attorney’s office intends to defend the claims against White and either waive or accept service on his behalf. To date, no response to these attempts has been received. Mr. Donahue never references that answers from the defendants regarding these claims are overdue, or due at present. Mr. Donahue also has not attached any documents as evidence to establish what “**documents**” were sent to Mr. Knightshead.

On April 16, 2014, plaintiff, filed a Motion for Preliminary Default, based on the premise that defendants had failed to file an answer to the suit. Defendants subsequently filed a motion to enroll and answer on April 17, 2014. The defendants then filed a Motion to Set Aside Clerk’s Entry of Default on Tuesday April 22, 2014, immediately after the Easter break.

Mr. Taylor’s criminal matter was dismissed on April 28, 2014. The city prosecutor’s office recused itself and the Attorney General’s office handled the matter. Prior to that date,

criminal charges had been pending against Mr. Taylor while this litigation was pending. Jeff Traylor of the Attorney General's office was assigned the criminal case. He signed a dismissal in the matter on April 28, 2014.

LAW AND ARGUMENT

To avoid dismissal of a suit pursuant to a Rule 12(b)(6) motion, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *In re the Complaint of Great Lakes Dredge & Dock Co., LLC*, 2010 WL 4013336, at 5 (quoting *Ashcroft v. Iqbal*, — U.S. —, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)). To be plausible, the complaint's “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 555, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). In deciding whether the complaint states a valid claim for relief, the court is to accept all well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff. *Great Lakes Dredge*, at 5 (citing *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir.2008)). The court is not to accept as true “conclusory allegations, unwarranted factual inferences, or legal conclusions.” *Id.* (quoting *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir.2007)).

Regarding liability immunity for public entities, the Louisiana legislature has defined “public entity” to mean and include the state and any of its branches, departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, employees, and political subdivisions and the departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, and employees of such political subdivisions. LSA R.S. 9:2798.1(A). Subsection B of the same statute goes on to state that “[l]iability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or

discretionary acts when such acts are within the course and scope of their lawful powers and duties.”
LSA R.S. 9:2798.1(B).

ARGUMENT

1. City Prosecutor Lisa Freeman and Parish Attorney Mary Roper cannot be civilly liable to Plaintiff in their individual capacities.

Plaintiff has failed to state a claim against Freeman and/or Roper in their individual capacities because both the City Prosecutor and Parish Attorney are absolutely immune from lawsuits arising from their official conduct as prosecutors. Further, Freeman and Roper were not personally involved in the actions giving rise to Plaintiff’s state law claims. Absent personal conduct, plaintiff has no claim against either.

a. Freeman and Roper are absolutely immune from civil liability.

Freeman and Roper are absolutely immune from all claims brought against them in their personal capacities. In *Imbler v. Pachtman*, the U.S. Supreme Court addressed the immunity granted to a state prosecutor being sued in his individual capacity. *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976) (affirmed by *Burns v. Reed*, 500 U.S. 478, 114 L. Ed. 2d 547, 111 S. Ct. 1934 (1991); *Buckley v. Fitzsimmons*, 509 U.S. 259, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993); and *Livermore v. Arnold*, 2011 WL 693569, 2011 U.S. Dist. LEXUS 15598 (M.D. La. 1/20/11)). 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." *Id.* at 430-31.

The Supreme Court extended a prosecutor's individual immunity to certain administrative

activities in Van de Kamp v. Goldstein, 555 U.S. 335, 129 S.Ct. 855, 859-861, 172 L.Ed.2d 706 (2009). The Court concluded that, when certain administrative activities, such as training, supervising, or implementing an information system, are of a kind that "itself is directly connected with the conduct of trial," such that it requires legal knowledge and "the exercise of related discretion," a prosecutor is entitled to absolute immunity in his individual capacity. *Id.* at 862. The Supreme Court reiterated that, while absolute immunity will sometimes deprive a plaintiff of rightful compensation from an unfair prosecutor, the "impediments to the fair, efficient functioning of a prosecutorial office that liability could create" made absolute immunity necessary." *Id.* at 864.

Federal courts have uniformly granted absolute prosecutorial immunity in §1983 cases involving conduct within the traditional scope of a prosecutor's responsibilities, even in instances of suppression of exculpatory information, and regardless of whether there is evidence of malice. Knapper v. Connick, 681 So.2d 944, 949 (La. 10/15/96).

Here, Freeman and Roper acted within their official capacities as City Prosecutor and Parish Attorney to carry out the prosecutorial process against a city ordinance violator in accordance with their professional duties as municipal lawyers. Under the federally upheld principle of absolute prosecutorial immunity, Freeman and Roper cannot be found personally liable for their prosecution of Plaintiff's city ordinance violations. Accordingly, Plaintiff has failed to state a claim upon which relief may be granted against Freeman and Roper in their personal capacities.

- b. **Freeman and Roper were not personally involved in the events leading to Plaintiff's lawsuit.**

Plaintiff's state law causes of action against Freeman and Roper should further be dismissed because absolute immunity extends to state law claims associated with the immune party's

prosecutorial duties, and further because they were not personally involved in the events of October 13, 2012. “Louisiana state courts have routinely recognized the reasoning in *Imbler* and have granted absolute immunity to prosecutors, who are acting within the scope of their prosecutorial duties as advocates for the State, from state law claims arising “as a consequences of conduct intimately associated with the judicial phase of the criminal process.” *Livermore*, at 8 (*See also Counsel v. Small, 2001 WL 617455 (E.D. La. 2001)*) (holding that absolute immunity was applicable to all state law claims asserted by the plaintiff)).

In *Livermore*, plaintiffs alleged negligence and/or intentional infliction of emotional distress against the district attorney and an assistant district attorney for prosecuting all misdemeanour charges regardless of merit. *Id.* at 1. The Middle District of Louisiana granted the district attorney for the 21st Judicial District’s and an assistant district attorney’s motion to dismiss with respect to the plaintiffs’ state law claims because the defendants were entitled to absolute immunity from suit on those claims. *Id.* Like the defendants in *Livermore*, Freeman and Roper merely performed their professional duties in the prosecution of plaintiff’s ordinance violations. Moreover, Freeman and Roper were not present nor did they participate in Plaintiff’s arrest on October 13, 2012.

Plaintiff’s attempt at bringing a form of vicarious liability upon Freeman and Roper fails because absolute immunity shields them from such claims against their individual capacities. Also, city police officers performing an arrest on a suspected lawbreaker is not within the scope of Freeman or Roper’s supervision or authority, nor do they have control or authority to direct city police officers in how they go about performing their jobs. Perhaps if an assistant city prosecutor or assistant parish attorney committed an act of negligence against an individual while in their course and scope of employment, the argument could be made that Freeman and/or Roper could be found

vicariously liable to the individual. However, absolute liability nevertheless shields the City Prosecutor and Parish Attorney from civil liability in §1983 actions when the actions complained of are "intimately associated with the judicial phase of the criminal process. Imbler, 424 U.S. at 430.

2. Baton Rouge City Police Chief Carl Dabadie cannot be civilly liable to Plaintiff in his individual capacity.

Chief Dabadie was neither present at Plaintiff's arrest nor was he the chief of police and/or the policymaker for the city of Baton Rouge at the time of Plaintiff's arrest. Chief Dabadie is nevertheless protected from any civil lawsuit brought by Plaintiff in connection to his arrest on October 13, 2012 by qualified immunity. Certain officials, including police officers and other state actors performing "discretionary functions," are shielded from suit if their conduct did not violate a "clearly established statutory or constitutional right of which a reasonable person would have known." Kador v. City of New Roads, 2011 WL 1326641 (M.D. La. 4/5/11) (citing Wilson v. Layne, 526 U.S. 603, 615, 119 S.Ct. 1692 (1999)). This doctrine, known as "qualified immunity," provides not only a defense to liability, but "immunity from suit." *Id.* (citing Hunter v. Bryant, 502 U.S. 224, 227, 112 S.Ct. 534 (1991)). Qualified immunity is an "entitlement not to stand trial or face the other burdens of litigation." *Id.* (citing Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806 (1985)).

The two step analysis of qualified immunity requires us to determine whether plaintiffs have alleged the violation of a constitutional right and whether such right was clearly established. *Id.* (citing Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151 (2001)).

The relevant, dispositive inquiry in determining whether a right is clearly established, is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *Id.* (citing Wilson v. Layne, 526 U.S. 603, 615, 119 S.Ct. 1692 (1999)).

Here, Plaintiff has failed to prove that the current Baton Rouge City Police Chief, Carl Dabadie, was present during the Plaintiff's events of October 13, 2012. More importantly, Chief Dabadie was not yet the chief of police for the city of Baton Rouge at the time the events transpired that make up Plaintiff's complaint. As a result of these undisputed facts, Plaintiff has failed to allege that Chief Dabadie has violated any constitutional right belonging to Plaintiff, whether or not such a right has been clearly established. For that reason along with the application of LSA R.S. 9:2798.1(B), Chief Dabadie has qualified immunity from this matter.

3. Baton Rouge City Police officers have qualified immunity for their actions in arresting Ernest Taylor.

Qualified immunity protects public officers from suit if their conduct does not violate any clearly established statutory or constitutional rights of which a reasonable person would have known.

Davila v. U.S., 713 F.3d 248 (5th Cir. 2013).

Courts have also determined that an Officers' conduct in connection with a traffic stop and ensuing altercation with individual who subsequently died were not objectively unreasonable, and therefore officers were entitled to qualified immunity in § 1983 suit brought by the individual's widow alleging excessive force; individual repeatedly refused to comply with first officer's requests to spit a plastic bag out of his mouth and to place his hands behind his back, and first officer struggled to restrain the individual, a relatively large man, against the hood of his patrol car and on the ground, and at no point from the beginning of the first officer's initial request to release the plastic bag until the end of the struggle did the individual attempt to comply with the first officer, and at the moment the second officer arrived, the first officer had not succeeded in handcuffing the individual, and the first officer and the individual were still engaged in a struggle. U.S.C.A.

Const.Amend. 4; 42 U.S.C.A. § 1983. Stogner v. Sturdivant, 515 Fed. Appx. 280 (5th Cir. 2013), petition for cert. filed, 81 U.S.L.W. 3680 (U.S. May 21, 2013).

County sheriff's deputy was entitled to qualified immunity from arrestee's § 1983 excessive force claim arising from deputy's hitting arrestee on shoulder while arrestee was allegedly attempting to stop motorcycle, causing arrestee to sustain injuries; it was objectively reasonable for deputy to use some force to detain arrestee for speeding, and not every reasonable official in deputy's circumstances would have known that his conduct violated Constitution. U.S.C.A. Const.Amend. 4; 42 U.S.C.A. § 1983. Aguilar v. Robertson, 512 Fed. Appx. 444 (5th Cir. 2013).

Police chief and officer did not violate clearly established constitutional right by taking disabled 11-year-old elementary school student into temporary custody on school playground, and thus chief and officer were entitled to qualified immunity with respect to student's claim for unlawful seizure under 1. § 1983; **no clearly established law informed police that school officials were not "custodians" under state statute from whom police were authorized to take custody of out-of-control minor**, and police reasonably believed student was out of control based on information they received from school officials. U.S.C.A. Const.Amend. 4; 42 U.S.C.A. § 1983; West's Ann.Cal. Welf. & Inst.Code § 601(a). C.B. v. City of Sonora, 730 F.3d 816 (9th Cir. 2013).

It is undisputed that the officers effectuated a traffic stop. Which under the law of the state of Louisiana they are entitled to do. Mr. Taylor, once out of the vehicle, provided that he knew his license number, but was not in possession of a valid driver's license. Officers then noticed that firearms were in Mr. Taylor's vehicle, in plain view. Mr. Taylor was mirandized and questioned. E advised that he had just left the club. He then advised that he had several guns in his vehicle but they were all registered to him. At that point officers requested that Mr. Taylor move to the back of the

police unit. Officers attempted to guide Mr. Taylor to the rear of the unit, when Mr. Taylor shouted stop pushing me, and began to resist officers authority.

Officers charged Mr. Taylor with, amongst other things, violation of City of Baton rouge ordinance 13:95.3, titled “Possession of Weapon where Alcohol is Sold.”. This ordinance, to date, has never been declared unconstitutional. As such, officers acting properly in arresting Mr. Taylor for what they considered, in good faith, a viable criminal offense. As such, the officers acted properly under the color of law, and are entitled to qualified immunity. Clearly, plaintiff’s claims are without merit.

4. That matter was basically stayed pending the resolution of the criminal matter.

Mr. Taylor filed suit in this matter while his criminal charges were pending in Baton Rouge City Court. Although not documented in the written communication, Mr. Hilburn and Mr. Donahue apparently were working on the matter in an effort to prevent Mr. Hilburn from filing a stay pending the criminal matter. In Zantiz v. Seal, 2013 WL 2459269, Citing Coughlin v. Lee, 946 F. 2d 1152, (5th Cir. 1991) provided that The Fifth Circuit “has acknowledged the existence of a law enforcement privilege” in documents generated by law enforcement. As such, based on counsel’s acknowledgment the criminal charges were pending until April 28, 2014, the matter was not ripe for litigation due to the pending criminal charges.

WHEREFORE, defendants, the City of Baton Rouge, Mary Roper, Carl Dabadie, Lisa Freeman, PatrickWennean and James Thomas, pray that the premises considered, this Motion for Entry of Default Judgment, be denied, and the entry of the preliminary default be

set aside and vacated and, after due proceedings are had, plaintiff's suit be dismissed at plaintiff's cost.

BY ATTORNEYS:

**Mary E. Roper
Parish Attorney**

/s/ Tedrick Knightshead

**Tedrick K. Knightshead (#20221)
Special Assistant Parish Attorney
10500 Coursey Blvd, Suite 205
Baton Rouge, LA 70816
(225) 389-8730 - Telephone
(225) 389-8736 - Facsimile**

**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 Response Opposition to Plaintiff's Motion to Strike was this date electronically filed with the Clerk of Court using the Court's CM/ECF system. Notice of this filing will be sent to Mr. Terrence J. Donahue, Jr., **McGlynn, Glisson, & Mouton PLLC**, 340 Florida Street, Baton Rouge, Louisiana 70801, by operation of the Court's electronic filing system. Notice will be mailed to any party or counsel not participating in the Court's CM/ECF system by this date depositing same in the United States Mail, first class postage prepaid, and properly addressed.

Baton Rouge, Louisiana this 30th day of May, 2014.

/s/ Tedrick K. Knightshead
Tedrick K. Knightshead

A

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR

Plaintiff,

VS.

THE CITY OF BATON ROUGE, ET AL.

Defendants.

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CIVIL ACTION

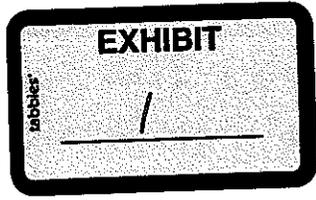
NO. 13-579-BAJ-RLB

MOTION TO CONTINUE SCHEDULING CONFERENCE

NOW INTO COURT, through undersigned counsel, comes Plaintiff Ernest Taylor who respectfully moves this Court for an Order continuing the scheduling conference currently scheduled for December 19, 2013 at 11:30 a.m. to a later date for the reasons appearing below.

Plaintiff filed this action on September 3, 2013. [Doc. 1]. On October 22, 2013, Mr. James L. Hilburn of the East Baton Rouge Parish Attorney's Office waived service on behalf of Defendants. [Doc. 3]. On October 31, 2013, the Court issued an Order setting a scheduling conference for December 19, 2013. [Doc. 4]. Since that time, counsel for the parties have been in contact, and have been working to assess the case and determine the items that need to be addressed in the scheduling order that is to be issued by the Court. These efforts have been frustrated by ongoing proceedings in Baton Rouge City Court related to Plaintiff's claim and the recent recusal of the City Prosecutor's office from that case. It is currently unknown what entity or political subdivision is in possession of Mr. Taylor's criminal file, and who will assume responsibility for prosecuting the criminal charges.

In the interest of making the most effective use of the Court's time, counsel for the



parties agree that it will be beneficial to continue the conference currently scheduled for December 19, 2013 in order to allow the parties to attempt to sort out the issues described above. The parties believe that one month should be sufficient time to address these issues.

WHEREFORE, Plaintiff Ernest Taylor prays that this Court continue the scheduling conference currently set for December 19, 2013, to allow the parties to resolve the issues identified above.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
TERRENCE J. DONAHUE, JR.
McGlynn, Glisson, & Mouton
340 Florida Street
Baton Rouge, Louisiana 70802-1909
(225) 344-3555
Bar Roll No.: 32126

CERTIFICATE OF CONFERENCE

I hereby certify that in an attempt to resolve the issues described in the above Motion, I conferred with James Hilburn, counsel for Defendants, who joined in the request for the relief identified above.

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on counsel for Defendants by providing same via electronic mail on this, the 4th day of December, 2013.

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

From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Friday, December 13, 2013 11:02 AM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

James,

The court granted the motion to continue last evening. Status report now due January 23 – don't hurt yourself trying to get something down before Santa arrives. Happy Holidays!

-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: James Hilburn [<mailto:JHILBURN@brgov.com>]
Sent: Wednesday, December 11, 2013 3:59 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

OK.

JAMES L. HILBURN
Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
Facsimile: 225/389-8736
Email: jhilburn@brgov.com

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From: Joe Donahue [<mailto:joe@mcglynnnglisson.com>]
Sent: Wednesday, December 11, 2013 3:10 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

James,

I have exchanged e-mails with Mr. Wall who has indicated that the AG's office currently does not intend to prosecute the charges against Mr. Taylor. Mr. Wall indicated that despite the recusal order, they have received nothing from the City Prosecutor or Parish Attorney's offices that would enable them to prosecute any charges, or comply with any discovery requests. Mr. Wall said he could offer no information, and therefore felt that meeting with us would be a futile exercise.

As a result, I think it necessary to move forward with Mr. Taylor's claims in federal court even though you may be unable to coordinate your efforts with the prosecution of the criminal charges (which appear to have been abandoned). If you have time this week or next, I would like to speak with you about beginning to perform some preliminary discovery, getting an answer or some form of appearance on the record, and also discuss submitting a status report to the magistrate. The form issued by the court is attached.

Let me know if there is a time that works for you, and we could do it by phone or in person – whatever your preference. 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@mcglynnnglisson.com

From: James Hilburn [<mailto:JHILBURN@brgov.com>]
Sent: Wednesday, December 11, 2013 10:51 AM
To: Joe Donahue

Cc: MICHELLE BATLEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

That sounds like a good idea. Let me know.

JAMES L. HILBURN

Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
Facsimile: 225/389-8736
Email: jhilburn@brgov.com

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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Wednesday, December 11, 2013 10:16 AM
To: James Hilburn
Subject: RE: Ernest Taylor v. City of Baton Rouge

James,

I went down to the city prosecutor's office yesterday and had them pull the motion and order recusing them from the case. I had never been served with it, and I'm assuming that the AG's office never received the order either. I've been speaking with someone from Kurt Wall's division that has been very helpful, and plan to forward the order to him today to see if we can get the ball moving.

Once we have someone from the AG's office assigned to the case, do you think it might be beneficial for the three of us to meet? I would like to get a handle on where we stand, and make some filings with the court before the holidays. 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: James Hilburn [mailto:JHILBURN@brgov.com]
Sent: Wednesday, December 11, 2013 9:13 AM
To: Joe Donahue
Subject: RE: Ernest Taylor v. City of Baton Rouge

Joe,

Looks fine to me. Thanks.

JAMES L. HILBURN
Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
Facsimile: 225/389-8736
Email: jhilburn@brgov.com

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From: Joe Donahue [mailto:joe@mcglynnglisson.com]
Sent: Wednesday, December 04, 2013 2:23 PM
To: James Hilburn
Subject: Ernest Taylor v. City of Baton Rouge

James,

Attached is the motion for continuance I plan to file with the Court. Let me know once you've had a chance to review, and I'll get it filed. 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



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: James Hilburn [<mailto:jamesh@SCWLLP.COM>]
Sent: Friday, February 28, 2014 2:39 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. BRPD

You're welcome. Sorry it took that long. The computers would only work sporadically for over a month. Supposedly, the computer system has been fixed. But, my legal assistant Michelle Bailey told me earlier today that they are acting up again.

Michelle (who is cc'd) has been in touch with BRPD about the "mystery" woman who was present that night. We don't think that person is a police officer but a civilian ride-along. Michelle is going to find out exactly who that person is and let us know.

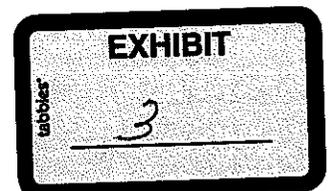
If you need anything else let us know. Feel free to directly email Michelle at any time. Thanks.

JAMES L. HILBURN
Associate Attorney
Shows, Cali & Walsh, LLP
628 St. Louis Street
Baton Rouge, LA 70802
Telephone: 225.346.1461
Facsimile: 225.346.1467

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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Friday, February 28, 2014 2:33 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. BRPD

James,



I got the file opened. Thanks for getting back to me today.

-Joe

From: James Hilburn [<mailto:jamesh@SCWLLP.COM>]
Sent: Friday, February 28, 2014 2:25 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: Ernest Taylor v. BRPD

Joe,

See attached.

JAMES L. HILBURN
Associate Attorney
Shows, Cali & Walsh, LLP
628 St. Louis Street
Baton Rouge, LA 70802
Telephone: 225.346.1461
Facsimile: 225.346.1467

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**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

ERNEST TAYLOR

Plaintiff,

VS.

THE CITY OF BATON ROUGE, ET AL.

Defendants.

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CIVIL ACTION

NO. 13-579-BAJ-RLB

STATUS REPORT

A. JURISDICTION

1. What is the basis for the jurisdiction of the Court?
 - a. Plaintiff: This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.
 - b. Defendants: 28 U.S.C. §1331.

B. BRIEF EXPLANATION OF THE CASE

1. *Plaintiff claims:* This case involves the arrest of Plaintiff Ernest Taylor and the confiscation of his lawfully held firearms for the purported infraction of possessing a weapon in the parking lot of an establishment that either sells or serves alcohol. Mr. Taylor asserts that the ordinance under which the Baton Rouge Police Department arrested him and confiscated his firearms violates the United States Constitution, and numerous provisions of Louisiana law. Mr. Taylor further asserts that the City of Baton Rouge and its individual actors were aware that enforcement of the ordinance would violate long-established legal principles regarding civil liberties and individual rights, but despite this knowledge actively utilized the ordinance's provisions to deprive citizens of their Constitutionally protected freedoms under the color of

state law. Plaintiff seeks injunctive and declaratory relief in addition to damages for physical and emotional injuries.

2. *Defendant claims:* The defendants deny that the plaintiffs' constitutional rights were violated by these defendants, and deny the specific factual allegations of the complaint against these defendants.

C. PENDING MOTIONS

List any pending motions, the date filed, and the basis of the motion(s).

1. **Plaintiff:** None at this time. Plaintiff anticipates filing a motion for preliminary injunction in the near future.

2. **Defendants:** None.

D. ISSUES

1. *Plaintiff's Statement of Issues:* The primary issue in this case is whether the City of Baton Rouge and its individual actors violated Plaintiff's civil rights through the enforcement of Section 13:95.3 of the Baton Rouge Code of Ordinances. At this point it is unknown which, if any, of Plaintiff's allegations will be disputed by the Defendants, and it is therefore unknown what issues will require resolution by the Court. Plaintiff anticipates that issues needing resolution may include: (1) a determination of whether §13:95.3 violates the U.S. Constitution, (2) whether Defendants should have been aware that enforcement of §13:95.3 was an unconstitutional exercise of power, and (3) the amount of Plaintiff's money damages.

2. *Defendants' Statement of Issues:*

- a. Whether the plaintiff's constitutional and/or statutory rights were violated.
- b. The damages, if any, suffered by the plaintiff.

c. Whether defendant is entitled to attorney's fees under 42 U.S.C. §-1988.

E. DAMAGES

1. *Plaintiff's calculation of damages:* Initially, Plaintiff seeks injunctive and declaratory relief. The amount of Plaintiff's money damages will be established through discovery and at the trial of this matter.

2. *Defendant's calculation of offset and/or plaintiff's damages:* Defendants contest the plaintiffs' claims for damages.

F. SERVICE

1. *Plaintiff:* Service has been waived on behalf of the following defendants: (1) The City of Baton Rouge; (2) Carl Dabadie, Jr.; (3) Mary E. Roper; (4) Lisa Freeman; (5) Patrick Wennemann; and (6) James Thomas. Currently, service has not been made upon defendant D. Dewayne White or Officer Jane Doe. Plaintiff will continue his attempts to bring defendant White within the jurisdiction of the Court, and it is believed that preliminary discovery will allow plaintiff to identify the Jane Doe defendant and properly effectuate service.

2. *Defendants:* None.

G. DISCOVERY

1. Have the initial disclosures required under FRCP 26(a)(1) been completed?

[] YES [X] NO

a. Do any parties object to initial disclosures?

[] YES [X] NO

b. For any party who answered *yes*, please explain your reason for objecting.

2. Briefly describe any discovery that has been completed or is in progress:

a. *By plaintiff:* Preliminary discussions have been held regarding written discovery and the depositions of Officers Thomas and Wenneman, but no formal requests have yet been made.

b. *By defendants:* Interrogatories and Requests for Production Propounded will be served on Plaintiff.

3. Please describe any protective orders or other limitations on discovery that may be required/sought during the course of discovery.

a. *By plaintiff:* None anticipated at this time.

b. *By defendants:* Unknown at this time.

4. Discovery from experts:

Identify the subject matter(s) as to which expert testimony will be offered:

By plaintiff: Plaintiff expects to evaluate the need for expert testimony throughout the pendency of this case, and to disclose those experts retained to provide expert testimony in accordance with Fed. R. Civ. P. 26.

By defendants: Defendants reserve the right to call an expert depending upon whether the plaintiff names such an expert.

H. PROPOSED SCHEDULING ORDER

The following schedule is submitted in accordance with the form provided by the Court:

1. Deadline for amending the complaint, or adding new parties, claims, counterclaims, or cross claims: **March 31, 2014**

2. Deadline for completion of fact discovery: **June 30, 2014**

a. Exchanging initial disclosures required by FRCP 26(a)(1): **March 17, 2014**

b. Filing all discovery motions and completing all discovery except expert reports: **June 30, 2014**

3. Disclosure of identities and reports of expert witnesses as required by Fed. R. Civ. P. 26(a)(2):

a. Plaintiff: July 31, 2014

b. Defendants: August 30, 2014

4. Completion of discovery from experts: September 30, 2014

5. Filing dispositive and Daubert motions: October 31, 2014

I. TRIAL

1. Has a demand for a trial by jury been made?

YES NO

2. Estimate the number of days trial will require.

a. *Plaintiff*: Plaintiff estimates trial could be completed in five (5) days.

b. *Defendants*: Defendants estimate a trial lasting three (3) days.

J. OTHER MATTERS

Are there any specific problems the parties wish to address at the scheduling conference?

YES NO

1. If the answer is yes, please explain:

2. If the answer is no, do the parties want the court to cancel the scheduling conference and to enter a scheduling order based on the deadlines set out in this report?

YES NO

K. SETTLEMENT

1. Please set forth what efforts, if any, the parties have made to settle this case to date.

This case is just beginning, and no efforts at settlement have yet been made.

2. Do the parties wish to have a settlement conference?

YES NO

While the parties do not believe a settlement conference would be beneficial at this stage, they remain open to the possibility that one may be beneficial at some later time, such as after discovery has been completed.

L. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE

You have the right to waive your right to proceed before a United States District Judge and may instead consent to proceed before a U.S. Magistrate Judge.

Indicate whether, at this time, all parties will agree, pursuant to 28 U.S.C. § 636(c), to have a Magistrate Judge handle all the remaining pretrial aspects of this case and preside over a jury or bench trial, with appeal lying to the United States Court of Appeals for the Fifth Circuit.

All parties agree to jurisdiction by a Magistrate Judge of this court:

YES NO

Report dated: March 5, 2014.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
TERRENCE J. DONAHUE, JR.
McGlynn, Glisson, & Mouton
340 Florida Street
Baton Rouge, Louisiana 70802-1909
(225) 344-3555
Bar Roll No.: 32126

/s/ James L. Hilburn, Esq.
Attorney(s) for Defendants
Mr. James L. Hilburn, Esq.
Special Assistant Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
225-389-8730 (telephone)
225-389-8736 (facsimile)
Counsel for City of Baton Rouge and Parish
of East Baton Rouge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been filed with the Court and served on counsel for Defendants through submission to the Court's CM/ECF system on this, the 5th day of March, 2014.

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

A

MICHELLE BAILEY

From: James Hilburn <jamesh@SCWLLP.COM>
Sent: Wednesday, March 05, 2014 3:53 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: FW: Ernest Taylor v. BRPD
Attachments: Joint Status Report - 3-5-14.docx

Joe,

I corrected 2 typos on pages 2 and 4. Those changes are in red.

Since Tedrick Knightshead will be taking over the file I would suggest pushing the deadlines back 30 days. That should allow him enough time to take over the file and conduct discovery. And, the deadlines will expire well before any trial date can be set. Will you agree to that change? Let us know. Thanks.

JAMES L. HILBURN
Associate Attorney
Shows, Cali & Walsh, LLP
628 St. Louis Street
Baton Rouge, LA 70802
Telephone: 225.346.1461
Facsimile: 225.346.1467

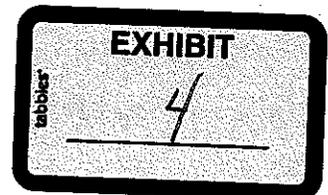
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From: Joe Donahue [mailto:joe@mcglynnnglisson.com]
Sent: Wednesday, March 05, 2014 3:44 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. BRPD

James,

Attached is another draft of the Status Report that I plan to file today. Other than some adjustments to the proposed schedule (which were necessary because some of the previously proposed deadlines had already expired), I did not change or add anything other than to incorporate your inserts. Let me know if you have any comments or concerns. I'll file it this evening if there aren't any concerns. Thanks,

-Joe



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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR

Plaintiff,

VS.

THE CITY OF BATON ROUGE, ET AL.

Defendants.

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CIVIL ACTION

NO. 13-579-BAJ-RLB

**PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL
OF DEFENDANT D. DeWAYNE WHITE**

TO THE HONORABLE MAGISTRATE JUDGE:

NOW INTO COURT, through undersigned counsel, comes Plaintiff Ernest Taylor who respectfully notifies this Court pursuant to Fed. R. Civ. P. 41(a) of the voluntary dismissal of defendant D. DeWayne White from this action, without prejudice, and further states as follows:

1. Plaintiff filed this action on September 3, 2013 against numerous defendants including former Baton Rouge Chief of Police D. DeWayne White ("White"). [Doc. 1].

2. On October 22, 2013, Mr. James L. Hilburn of the East Baton Rouge Parish Attorney's Office waived service on behalf of all Defendants except White. [Doc. 3].

3. After receiving notification of the waiver of service by the East Baton Rouge Parish Attorney's Office, undersigned counsel and Mr. Hilburn engaged in numerous conversations regarding various issues in this case, including the potential representation of White by the Parish Attorney.

4. In February or early March of 2014, Mr. Hilburn informed undersigned counsel that he no longer was serving as an Assistant Parish Attorney, and that this case would be



handled by Mr. Tedrick Knightshead, another Assistant Parish Attorney, going forward.

5. Undersigned counsel for Plaintiff has attempted on numerous occasions to contact Mr. Knightshead regarding this case, and in particular, to determine whether the Parish Attorney's office intends to defend the claims against White and either waive or accept service on his behalf. To date, no response to these attempts has been received.

6. As White's whereabouts are currently unknown, and as it is believed that he is no longer residing in Baton Rouge, service of Plaintiff's Complaint on this defendant is not feasible.

7. White has not answered Plaintiff's complaint or made any filings with this Court, and voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(1)(A)(i) is therefore appropriate.

WHEREFORE, Plaintiff Ernest Taylor prays that the Court accepts this Notice, and dismisses defendant D. DeWayne White from this action without prejudice.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
TERRENCE J. DONAHUE, JR.
McGlynn, Glisson, & Mouton
340 Florida Street
Baton Rouge, Louisiana 70802-1909
(225) 344-3555
Bar Roll No.: 32126

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. A copy was also sent via U.S. Mail, First Class, to:

Office of the Parish Attorney

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

on this, the 9th day of April, 2014.

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