

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER	*	CIVIL ACTION
	*	
VERSUS	*	DOCKET NO. 21-656
	*	
STATE OF LOUISIANA: DEPT. OF	*	JUDGE JOHN W. DEGRAVELLES
PUBLIC SAFETY & CORRECTIONS:	*	
PUBLIC SAFETY SERVICES; OFFICE	*	MAGISTRATE RICHARD L. BOURGEOIS, JR.
OF STATE POLICE	*	

**REPLY MEMORANDUM IN SUPPORT OF RULE 12(b) MOTION TO DISMISS
DPSC/LSP**

Defendants, Col. Lamar Davis and the Louisiana Department of Public Safety & Corrections (Office of State Police) (erroneously named and referred to in the Petition as “State of Louisiana: Department of Public Safety & Corrections: Public Safety Services; Office of State Police”) (hereafter referred to as “DPSC/LSP”), submit this reply memorandum in support of the Rule 12(b) Motion to Dismiss [Rec. Doc. 8].

Insufficient Process and/or Service of Process

Previously asserted service deficiencies appear to have been cured and are withdrawn.

42 U.S.C. § 1981 Claim

Because Plaintiff deletes/renounces all Section 1981 claims in the *Second Supplemental, Amending, and Restated Complaint* [Rec. Doc. 12-1] (filed while the *Rule 12(b) Motion to Dismiss Plaintiff’s Claims against DPSC/LSP* [Rec. Doc. 8] was pending), Defendants motion to dismiss Plaintiff’s Section 1981 claim is moot.

42 U.S.C. § 1983 Monell Claim

In the *Second Supplemental, Amending, and Restated Complaint* [Rec. Doc. 12-1], Plaintiff added Colonel Lamar Davis as a defendant “individually and in his official capacity.”¹ Suit against the Superintendent, in his official capacity, is in actuality a suit against Plaintiff’s employer LSP.² In his *Memorandum in Opposition to the Motion to Dismiss* [Rec. Doc. 19], Plaintiff contends the “references to *Monell* liability are similarly moot as Mr. Cavalier makes no claim for ‘municipal’/respondeat superior liability in the present action.”³ To the extent Plaintiff asserts an official capacity *Monell* claim against DPSC/LSP, that claim should be dismissed with prejudice for the reasons previously set forth in the memorandum in support of DPSC/LSP’s motion to dismiss and in accordance with the Plaintiff’s judicial admission.

Respectfully Submitted,

JEFF LANDRY
Attorney General

BY: *s/Ben L. Mayeaux*

JENNIE P. PELLEGRIN – LA. BAR ROLL NO. 25207

jpellegrin@neunerpate.com

BEN L. MAYEAUX – LA. BAR ROLL NO. 19042

bmayeaux@neunerpate.com

NEUNERPATE

One Petroleum Center, Suite 200

1001 West Pinhook Road (zip 70503)

Post Office Box 52828

Lafayette, LA 70505-2828

TELEPHONE: (337) 237-7000 FAX: (337) 233-9450

*Special Assistants Attorneys General and Counsel
for the Louisiana Department of Public Safety &
Corrections (Office of State Police) and Colonel
Lamar Davis*

¹ Rec. Doc. 12-1, *Second Supplemental, Amending, and Restated Complaint*, para. 2 (2).

² *Hitt v. McLane*, 854 F.App’x 591, 594 (5th Cir. 2021) (citing *Burge v. Par. of St. Tammany*, 187 F.3d 452, 466 (5th Cir. 1999)).

³ Rec. Doc. 19, *Memorandum in Opposition to Rule 12(B) Motion to Dismiss*, p. 6, fn 8.

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2022, a copy of the *Reply Memorandum in Support of Rule 12(b) Motion to Dismiss DPSC/LSP* was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be forwarded to all counsel by operation of the Court's electronic filing system.

s/Ben L. Mayeaux