

19<sup>TH</sup> JUDICIAL DISTRICT COURT  
OF THE  
STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

CARL CAVALIER : NO. C-732938 SEC. 24  
v. :  
LOUISIANA STATE POLICE COMMISSION :

**ANSWER WITH AFFIRMATIVE DEFENSES &  
DILATORY EXCEPTION OF UNAUTHORIZED USE OF SUMMARY PROCEEDING**

NOW INTO COURT, through undersigned counsel, comes Defendant, the Louisiana State Police Commission (“LSPC”), and for answer to the Petition for Writ of Mandamus, denies each and every allegation contained therein, except for those admissions that are specifically made herein as follows:

1.

The allegations pertaining to the creation of the LSPC contained in Paragraph 1 of the Plaintiffs’ Petition are admitted.

2.

The allegations contained in Paragraph 2 of the Plaintiffs’ Petition are admitted.

3.

The allegations contained in Paragraph 3 of the Plaintiffs’ Petition are denied as written. Defendant admits that all three of Plaintiff’s appeals were continued, without date, by the LSPC pending resolution of the federal court proceeding in the United States District Court for the Middle District of Louisiana (Carl Cavalier vs. State of Louisiana: Department of Public Safety and Corrections: Public Safety Services, et al., CA No. 21-656-JWD-RLB). LSPC was advised that in the federal proceeding, Plaintiff agreed to settle all his claims, including his three appeals before the LSPC. In that proceeding, a Motion to Enforce Settlement Agreement was filed on behalf of Louisiana Department of Public Safety and Corrections, Public Safety Services, Office of State Police (hereafter “OSP”). On February 24, 2023, Magistrate Judge Richard L.

Bourgeois, Jr. issued a Magistrate Judge's Report and Recommendation in which he recommended that the Court grant Defendants' Motion to Enforce Settlement Agreement and Order the parties to comply with the terms of their settlement agreement. (Attached). On May 22, 2023, Judge John W. deGravelles of the U.S. District Court for the Middle District of Louisiana, issued a Ruling and Order granting Defendants' Motion to Enforce Settlement Agreement and ordering the parties to comply with the terms of their settlement agreement. (Attached). The signed settlement agreement was filed under seal and is not available to LSPC; however, the parties represented to the LSPC that the federal court settlement would encompass the appeals before the LSPC. After the settlement conference was held before Magistrate Judge Bourgeois, on October 19, 2022, a Motion to Continue all of Plaintiff's hearings pending before the LSPC was received by the LSPC. This Motion for Continuance provided, "Louisiana State Police (through the Office of Risk Management and the Attorney General's Office for the State of Louisiana) has approved a settlement agreement which has been agreed to by the appellant Carl Cavalier and his counsel of record Jill Craft." It further provides, "Under the terms of the parties' settlement agreement, the cases currently pending before the Commission are moot insofar as they were resolved through compromise reached on October 6, 2022, during a court ordered settlement conference conducted by U.S. Magistrate Judge Richard Bourgeois, Jr. (although the final compromise agreement has yet to be signed by all parties). (Attached). LSPC granted the motion for continuance without date of all Plaintiff's appeals/hearings pending before the LSPC on October 20, 2022. Judge deGravelles decision to enforce the settlement agreement and order the parties to comply with the settlement (described above) was entered on May 22, 2023. At this time, LSPC is not aware of whether that decision is final or whether there was an appeal to the United States Fifth Circuit. Under the circumstances, it was reasonable for the LSPC to continue all hearings related to Plaintiff until there is clarity on whether or not his appeals have been settled thereby rendering the proceedings moot.

4.

The allegations contained in Paragraph 4 of the Plaintiffs' Petition are denied as written. Defendant admits that the LSPC set Plaintiff's appeals for hearing; however, all three appeals were continued after the LSPC received notification that Plaintiff agreed to dismiss all three

appeals as part of a settlement in the suit entitled Carl Cavalier vs. State of Louisiana: Department of Public Safety and Corrections: Public Safety Services, et al., CA No. 21-656-JWD-RLB, pending in the United States District Court for the Middle District of Louisiana.

5.

The allegations contained in Paragraph 5 of the Plaintiffs' Petition are denied.

6.

The allegations contained in Paragraph 6 of the Plaintiffs' Petition are denied.

7.

The allegations contained in Paragraph 7 of the Plaintiffs' Petition are denied.

8.

The allegations contained in Paragraph 8 of the Plaintiffs' Petition are denied.

#### **AFFIRMATIVE DEFENSES**

And now responding to the allegations of the Petition, Defendants affirmatively aver, allege and plead the following affirmative defenses:

9.

This Court lacks subject matter jurisdiction over Defendant.

10.

Plaintiff settled all claims pending before the LSPC; thereby, rendering the proceedings moot and res judicata.

11.

The LSPC acted within its authority, using its discretion, to continue the Plaintiff's appeals/hearings without date.

12.

A writ of mandamus is not an appropriate procedure where there is an element of discretion left to the public officer. If a public officer is vested with any element of discretion,

mandamus will not lie. The LSPC is vested with broad and general rulemaking powers for the administration and regulation of the classified state police service. La. Const. Art. 10 §48 (A). LSPC Rule 13.6 provides, “The Executive Director shall fix the time and place for the hearing of appeals by the Commission, and, as far as practicable, shall fix them in the order in which docketed, provided that, for good cause shown, the Commission, its Chairman, or the Executive Director may upset any fixing or placement on the docket or give the matter a special assignment both as to time and place.” The LSPC had the discretion to determine whether a matter fixed for hearing should be upset and or continued; therefore, a writ of mandamus is inappropriate under these facts. Moreover, the matter may be settled.

**13.**

On September 1, 2022, a Joint Motion to Continue Hearing and to Rescind all Issued Subpoenas was issued in Plaintiff’s appeal before the LSPC bearing docket number 21-256-D. The Joint Motion was signed by counsel for Plaintiff as well as by counsel for the Louisiana Department of Public Safety and Corrections, Public Safety Services, Office of State Police. The motion provided that a continuance was sought, because “...the parties are engaging in an ongoing effort to fully resolve all administrative, state and federal claims, in globo...” (Attached). LSPC granted the motion for continuance without date on September 1, 2022. (Attached)

**14.**

On October 19, 2022, a Motion to Continue all of Plaintiff’s hearings pending before the LSPC was received by the LSPC. This Motion for Continuance provided, “Louisiana State Police (through the Office of Risk Management and the Attorney General’s Office for the State of Louisiana) has approved a settlement agreement which has been agreed to by the appellant Carl Cavalier and his counsel of record Jill Craft.” It further provides, “Under the terms of the parties’ settlement agreement, the cases currently pending before the Commission are moot insofar as they were resolved through compromise reached on October 6, 2022, during a court ordered settlement conference conducted by U.S. Magistrate Judge Richard Bourgeois, Jr. (although the final compromise agreement has yet to be signed by all parties). (Attached). LSPC granted the motion for continuance without date of all Plaintiff’s appeals/hearings pending

before the LSPC on October 20, 2022.

15.

Plaintiff has no right of action against Defendant.

16.

Plaintiff has no cause of action against Defendant.

17.

The State Police Commission and its executive director, Jason Hannaman, at all times pertinent hereto, acted in the course and scope of their lawful powers and duties.

18.

Plaintiffs' action is *res judicata*, as he entered into a lawful settlement agreement that included a settlement and dismissal of all three appeals that are pending before the LSPC.

Further answering, Defendants specifically request notice of any and all orders, rulings or notices issued by the Court in this matter.

**DILATORY EXCEPTION OF**  
**UNAUTHORIZED USE OF SUMMARY PROCEEDING**

1.

Defendants raise the Dilatory Exception of Unauthorized Use of Summary Proceeding in accordance with La. Code Civ. P. art. 926 A (1).

2.

Plaintiff's petition contains an improper request for a mandamus proceeding under La. R.S. 38:2191. Mandamus is not an available remedy to compel performance of a duty in which the public officer must exercise discretion or evaluate evidence. Mandamus is only appropriate in situations where there is a clear and specific legal right to be enforced or a duty that ought to be performed; it never issues in doubtful cases. *Wiginton v. Tangipahoa Parish Council*, 2000-

1319, p. 4 (La. App. 1 Cir. 6/29/01), 790 So.2d 160, 163, *writ denied*, 2001-2541 (La. 12/7/01), 803 So.2d 971.

3.

The LSPC is vested with broad and general rulemaking powers for the administration and regulation of the classified state police service. La. Const. Art. 10 §48(A).

4.

LSPC Rule 13.6 provides, "The Executive Director shall fix the time and place for the hearing of appeals by the Commission, and, as far as practicable, shall fix them in the order in which docketed, provided that, for good cause shown, the Commission, its Chairman, or the Executive Director may upset any fixing or placement on the docket or give the matter a special assignment both as to time and place." The LSPC had the discretion to determine whether a matter fixed for hearing should be upset and or continued; and a writ of mandamus is inappropriate under the facts of this case.

5.

Plaintiff filed three separate appeals before the LSPC that were related to discipline he received from his employer, the Department of Public Safety, Office of State Police (hereafter OSP) and/or allegations of discrimination by his employer. Each of these appeals were set for hearing, until LSPC received a request for continuance and then notification from counsel for plaintiff (at the time), Jill Craft, and counsel for OSP, that Plaintiff entered into a settlement agreement in a federal court suit that resolved and settled all his claims against OSP, including the three appeals that were pending before the LSPC. LSPC continued all three appeals pending before it without date.

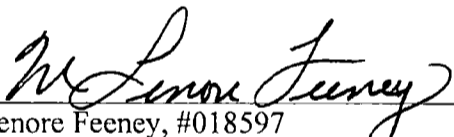
6.

LSPC did not dismiss the three appeals, because it was informed that after the parties had reached a settlement before Magistrate Richard Bourgeois in the federal court for the Middle District of Louisiana, Plaintiff sought to have the settlement undone. Since the settlement agreement was made, OSP filed a Motion to Enforce the Settlement in the Middle District of Louisiana, and Magistrate Bourgeois submitted a Report and Recommendation to Judge John

deGravelles recommending that the settlement agreement be enforced. Judge deGravelles agreed and issued a ruling upholding settlement. It is unknown whether plaintiff intends to appeal to the United States Court of Appeals for the Fifth Circuit. Because the appeal delays in federal court have not run, the LSPC has not dismissed Plaintiff's three appeals, rather the appeals have been continued without date. This action by the LSPC was within its discretion to take, and was appropriate considering judicial efficiency and the cost of holding three different hearings on matters that may have been settled.

**WHEREFORE**, Defendant, the Louisiana State Police Commission, prays that its Dilatory Exception of Unauthorized Use of Summary Proceeding be granted and the case dismissed, and, alternatively, Defendants pray for notice of trial, and that this Answer be deemed suitable and that, after all legal delays and proceedings are had, there be judgment entered against Plaintiff and in favor of Defendant, with prejudice, and with Plaintiff to pay all court costs, expert witness fees and attorney's fees.

Respectfully submitted by:

By   
M. Lenore Feeney, #018597  
TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.  
8TH FLOOR - CHASE TOWER NORTH  
450 Laurel Street  
Baton Rouge, LA 70801  
Phone: (225) 387-3221  
Fax: (225) 346-8049