

JESSE BARCELONA, DOUGLAS CHUTZ, NUMBER: DIV:
TODD THOMAS AND TROY LAWRENCE, SR.
19TH JUDICIAL DISTRICT COURT
VERSUS
PARISH OF EAST BATON ROUGE
CITY OF BATON ROUGE/PARISH OF EAST
BATON ROUGE D/B/A BATON ROUGE STATE OF LOUISIANA
POLICE DEPARTMENT

**PETITION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Jesse Barcelona and Douglas Chutz, who respectfully represent:

THE PARTIES

1.

Plaintiffs are individuals of the full age of majority who reside in Baton Rouge, Louisiana, and who at all relevant times are employed by the Baton Rouge City Police Department and have attained permanent status in the Baton Rouge Fire and Police Municipal Service.

2.

Made defendant herein is the City of Baton Rouge/Parish of East Baton Rouge doing business as the Baton Rouge City Police Department (hereinafter "BRPD"), a political subdivision of the State of Louisiana.

JURISDICTION AND VENUE

3.

Jurisdiction and venue is proper in this Court since defendant is located within the Parish of East Baton Rouge.

FACTUAL BACKGROUND

4.

Douglas Chutz has earned the rank of Corporal and has been employed by BRPD for 16.5 years. Jesse Barcelona has earned the rank of Sergeant and has been employed by BRPD for over 20 years. Troy Lawrence, Sr. has earned the rank of Deputy Chief and has been employed by BRPD for over 27 years. Todd Thomas has earned the rank of Corporal and has been employed by BRPD for 9.5 years.

5.

On or prior to September 19, 2023, an Internal Affairs (hereinafter "IA") investigation

was begun by BRPD against all plaintiffs concerning an alleged incident that took place on September 28, 2020.

6.

As a part of the investigation, each plaintiff presented to IA for an interview for the purpose of giving a statement for the administrative process. Each officer was accompanied by an attorney as allowed by La.-R.S. 40:2531.

7.

At the completion of the aforementioned Internal Affairs' investigation, an Interdepartmental Correspondence was issued to each officer dated December 1, 2023, setting pre-disciplinary hearings for each on December 14, 2023. This date was set unilaterally by BRPD with absolutely no input by any of the officers or the counselors that had represented them at the IA interview. It should be noted that the pre-disciplinary hearing is generally set at least 30 days from the issuance of the letter to allow receipt of the IA file, review of the evidence by officer and counsel, preparation for hearing, etc.

8.

Upon notification by the officers to their counsel, each counselor immediately notified BRPD that he was unavailable due to a prior scheduling conflict. All counsel requested that their respective hearings be rescheduled.

9.

All counsel also requested a copy of the entire IA file concerning the investigation of their clients. The file was made available to each counselor beginning December 4, 2023 and consisted of several hundred pages of documents and numerous hours of audio taped interviews.

10.

In response to the several requests to reschedule the hearing, BRPD offered to move the hearings up to December 11 or 12. Once again, counsel advised that there were scheduling conflicts but, more importantly, this was simply not enough time to adequately review the numerous documents and recordings contained within the IA file with the officers, process the information and prepare a defense.

11.

BRPD then responded that the hearing would move forward as originally scheduled on December 14, 2023.

12.

Without entry of a temporary restraining order, deprivation of Plaintiffs' rights is imminent, particularly that plaintiffs Barcelona and Chutz will be forced to attend their pre-disciplinary hearings without their counsel who has represented them from the time they were first notified of the IA investigation.

13.

Should Defendant not be enjoined, Plaintiffs will suffer immediate and irreparable harm, damage, injury, in violation of Plaintiffs' clearly established Constitutional Rights under both the United States Constitution and the Louisiana Constitution.

COUNT ONE – VIOLATION OF DUE PROCESS RIGHTS/RIGHT TO COUNSEL

14.

Plaintiff realleges and reavers the allegations in Paragraphs 1-13.

15.

As public employees that have attained permanent status in the Baton Rouge Fire and Police Municipal Civil Service, plaintiffs have a clearly established property interest in their employment positions. *See Murray v. Department of Revenue & Taxation*, 504 So. 2d 561 (La. App. 1 Cir. 1986) and *Lange v. Orleans Levee District*, 56 So. 3d 925 (La. 2010).

16.

Plaintiffs' property interests are protected by Article I, Section 2 of the Louisiana Constitution, which provides that "[n]o person shall be deprived of life, liberty, or property, except by due process of law." Plaintiff cannot be deprived of these rights unless strict due process rights are adhered to by BRPD.

17.

La.-R.S.40:2531, better known as the Police Officer Bill of Rights, specifically allows for an officer under investigation to have counsel represent him in the administrative process. This is also reiterated in the Baton Rouge Municipal Fire and Police Civil Service Board Rule VI Section 3 which reads: "Parties shall have the right...to be represented by counsel."

18.

The December 1, 2023 Interdepartmental Correspondence received by the plaintiffs specifically states, "'You may bring with you a lawyer...and present evidence relative to your conduct outlined above...'"

19.

The failure of BRPD to agree to a hearing date that is mutually agreeable with the officers' counsel effectively denies plaintiffs of their right to counsel as provided in the Police Officer Bill of Rights, Civil Service Board Rules and its own correspondence.

20.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Davis v. Scherer*, 468 U.S. 183, 202, 104 S.Ct. 3012, 82 L.Ed.2d 139 (1984).

21.

Plaintiffs' constitutional due process rights are violated when BRPD specifically affords the right to counsel for the officers, but only at a time when it is convenient to BRPD. The "meaningfulness" of the time of the hearing is rendered void when only one party is available. Furthermore, based on previous hearings it is alleged that BRPD will have counsel at said hearing.

22.

Finally, as previously stated, the IA file for this matter is voluminous, consisting of hundreds of documents and hours of audio. BRPD expects counsel to set every other previously scheduled matter aside and give its matter precedence. This is simply unfair and an abuse of its position of supposed impartial arbiter.

23.

The fact of the matter is that all counsel for the officers have busy schedules and should have been consulted before BRPD unilaterally scheduled a hearing at a date and time that is only convenient to it. It is apparent that this is an attempt to have this matter heard prior to Chief Paul's departure from BRPD (his retirement party is scheduled for Friday). There is too much at stake for these long tenured officers for there to be a rush to "justice".

24.

That some counsel can now appear at the hearing on behalf of their clients does not negate the fact that "meaningful representation" is compromised by the expeditious nature of the scheduling. BRPD has had this file for over three(3) months but expects counsel to fully digest this large IA file, meet and discuss with clients and adequately prepare for the hearing on less than two(2) weeks notice.

25.

This “rush job” renders the manner in which the officers’ defense can be presented unmeaningful and, therefore, a violation of their due process rights.

COUNT TWO – TEMPORARY RESTRAINING ORDER AND INJUNCTION

26.

Plaintiff realleges and reavers the allegations in Paragraphs 1-25.

27.

La. C.C.P. article 3601, *et seq.*, provides for the issuance of a temporary restraining order and, thereafter, preliminary injunction and, in due course, a permanent injunction where, as here, there exists immediate and irreparable injury, loss, or damage resulting to Plaintiff, and which are not compensable in money damages.

28.

A showing of irreparable injury, however, is not necessary when the deprivation of a constitutional right is involved. *S. Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm’n*, 555 So.2d 1370, 1373 (La.1990).

29.

Here, the unilateral setting of the pre-disciplinary hearing that fails to allow for all counsel to appear and the complete lack of adequate time to sufficiently prepare nullifies the statutory and constitutional right to have counsel and prepare a meaningful defense. This violates plaintiffs’ right to due process and, therefore, irreparable injury need not be shown.

30.

Plaintiffs will suffer a deprivation of rights, privileges, and immunities secured to Plaintiffs by the Louisiana and United States Constitutions if BRPD is allowed to move forward with the pre-disciplinary hearing on December 14, 2023 on only thirteen (13) days notice with less than ten(10) days to prepare. Thus, Plaintiffs are entitled to and desire issuance of an immediate temporary restraining order and, thereafter, Preliminary Injunction and, in due course, a Permanent Injunction, enjoining BRPD from conducting a hearing and imposing discipline of any kind or taking any action against Plaintiffs until adequate time is allowed to prepare for such hearing.

31.

Alternatively, should a showing of irreparable injury be required, Plaintiffs show that they could suffer lifelong and irreparable diminution to their reputations if BRPD is allowed to conduct

a premature hearing with inadequate notice and without counsel. Plaintiffs aver that they have made law enforcement their life's calling and the damage to their reputations that will result if BRPD is allowed to move forward, prohibiting counsel from appearing or granting sufficient time to prepare a defense, will forever tarnish their reputations and prevent them from continuing in law enforcement. (See *Easterling v. Estate of Miller*, 184 So. 3d 222 (La. App. 4 Cir. 2015).

32.

BRPD's proposed course of action denies Plaintiffs the rights under the United States and Louisiana Constitution as well as the statutory rights granted by the Police Officer Bill of Rights, which are set forth above and, unless enjoined, Plaintiffs clearly established rights will be violated and they will also suffer irreparable harm with the resulting damage to their reputations.

33.

Plaintiffs show that the requested temporary restraining order and injunctive relief would not involve or compel the expenditure of public funds.

34.

Plaintiffs have verified this petition via attached affidavits.

35.

Attached hereto and made part hereof is the Certification of Counsel pursuant to La. C.C.P. article 3603 setting forth counsel's efforts to give notice prior to the filing of this Petition.

36.

Plaintiffs request that hearing on the request for Preliminary Injunction be set in accordance with law.

37.

Plaintiffs seek and are entitled to all such other relief afforded at law or in equity.

38.

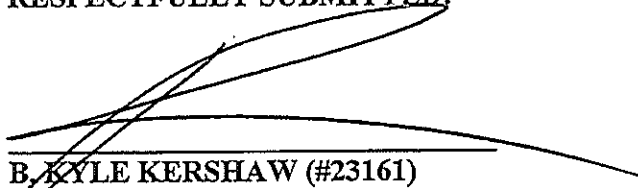
Petitioners request that any bond required to be set by this Honorable Court be waived or issued in a nominal amount since it involves an attempt to enjoin a public entity from violating the law that could affect the constitutional and statutory rights of Petitioners.

39.


In accordance with Louisiana Code of Civil Procedure, Articles 1572 and 1913, plaintiffs request written notice of any and all assignments of this case for trial or hearing and notice of any signing of any Judgment herein.

WHEREFORE, Plaintiffs, Jesse Barcelona, Douglas Chutz, Todd Thomas and Troy Lawrence, Sr. respectfully pray that after due proceedings are had herein, that a temporary restraining order and, thereafter a Preliminary Injunction and, in due course, a Permanent Injunction issue herein directed to defendants, the City of Baton Rouge and the Baton Rouge Police Department, enjoining the defendant, its agents, employees, and assigns from proceeding with any further consideration, hearing, or rehearing, of any kind regarding Plaintiffs and the allegations made by defendant against Plaintiff, from imposing discipline of any kind, or taking any action against Plaintiff arising from the alleged incidents until such time that an adequate opportunity is afforded to prepare for the pre-disciplinary hearing, and all such other relief afforded Plaintiff at law or in equity.

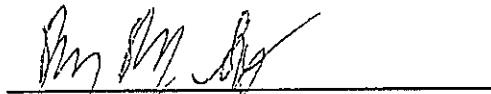
RESPECTFULLY SUBMITTED:



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JESSE BARCELONA, DOUGLAS CHUTZ,
TODD THOMAS AND TROY LAWRENCE, SR.

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VERSUS

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BATON ROUGE D/B/A BATON ROUGE
POLICE DEPARTMENT

STATE OF LOUISIANA

VERIFICATION

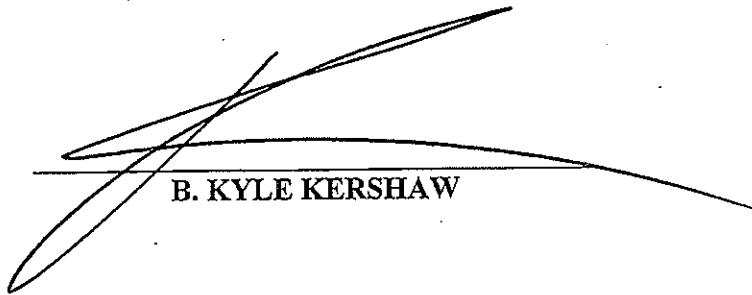
STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, duly commissioned and qualified, in and for the
above Parish and State, personally came and appeared:

B. KYLE KERSHAW

who, being duly sworn, did depose and state that he has conversed with all plaintiffs prior to
executing this verification. That plaintiff, Todd Thomas, has appointed him agent for purposes of
signing this verification. That he has provided a copy of the foregoing PETITION FOR
TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT
INJUNCTION to all plaintiffs and confirmed they have read same. All plaintiffs have confirmed
that all allegations contained therein are true and correct to the best of their knowledge, information
and belief.



B. KYLE KERSHAW

SWORN TO AND SUBSCRIBED before me this 13 day of December
2023 Baton Rouge, Louisiana.



Notary Public

My Commission is for Life

Brent Stodolski

Bar # 19804

JESSE BARCELONA, DOUGLAS CHUTZ,
TODD THOMAS AND TROY LAWRENCE, SR.

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VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, duly commissioned and qualified, in and for the above Parish and State, personally came and appeared:

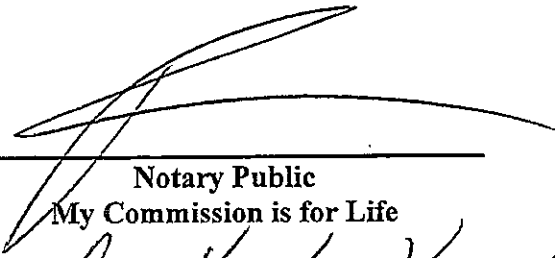
BRENT STOCKSTILL

who, being duly sworn, did depose and state that he has conversed with plaintiff, Troy Lawrence, Sr., prior to executing this verification. That he has provided a copy of the foregoing PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION to all plaintiffs and confirmed they have read same. Plaintiff has confirmed that all allegations contained therein are true and correct to the best of his knowledge, information and belief. Plaintiff has also confirmed that he will suffer irreparable harm as alleged in the aforementioned pleadings



BRENT STOCKSTILL

SWORN TO AND SUBSCRIBED before me this 13 day of December
2023 Baton Rouge, Louisiana.



Notary Public
My Commission is for Life
B Kyle Ker-shaw #2316,

JESSE BARCELONA, DOUGLAS CHUTZ,
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CERTIFICATION OF COUNSEL PURSUANT TO La.C.C.P. ART. 3603

I, B. Kyle Kershaw, counsel for Jesse Barcelona and Douglas Chutz and agent for Todd Thomas for the limited purpose of these pleadings do hereby certify, pursuant to La.-C.C.P. Art 3603 and on behalf of all plaintiffs, that on December 13, 2023 I have forwarded a copy of the Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction via electronic to:

City of Baton Rouge/Parish of East Baton Rouge
Through Baton Rouge Police Department
Chief Murphy Paul
mjpaul@brla.gov

City of Baton Rouge/Parish of East Baton Rouge
Through the Mayor-President
Mayor Sharon Weston Broome
mayor@brla.gov

City of Baton Rouge/Parish of East Baton Rouge
Through the Mayor Pro Tem
Lamont Cole
lcole@brla.gov


B. KYLE KERSHAW

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POLICE DEPARTMENT

ORDER

Considering the Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction filed herein along with the verifications attached thereto, the record of this proceeding, and the law:

IT IS ORDERED that a temporary restraining order is hereby issued preventing the City of Baton Rouge/Parish of East Baton Rouge d/b/a Baton Rouge Police Department from proceeding with the pre-disciplinary hearings concerning plaintiffs, Jesse Barcelona, Douglas Chutz, Todd Thomas and Troy Lawrence, Sr. until such time that the hearing on the requested preliminary injunction take place.

IT IS FURTHER ORDERED that the temporary restraining order is to remain in effect for ten days, unless extended pursuant to Code of Civil Procedure Article 3604 or is replaced with a preliminary injunction.

IT IS FURTHER ORDERED that in accordance with Code of Civil Procedure Article 3610, in order for this temporary restraining order to go in effect, Petitioners, Jesse Barcelona, Douglas Chutz, Todd Thomas and Troy Lawrence, Sr. post security in the total amount of \$ _____ with the Registry of the Court.

IT IS FURTHER ORDERED that in accordance with Code of Civil Procedure Article 3604, this temporary restraining order was issued without notice or hearing because the nature of the conduct of the City of Baton Rouge/Parish of East Baton Rouge in attempting to compel Petitioners' attendance and defense at the pre-disciplinary hearing scheduled on December 14, 2023 provides insufficient time to serve notice upon the Defendant for a preliminary injunction hearing.

IT IS FURTHER ORDERED that the City of Baton Rouge/ Parish of East Baton Rouge appear and show cause, if it has or can, on the ____ day of _____, 202__ at _____ o'clock ____ M why a preliminary injunction should not be granted that prevents the City of Baton Rouge/Parish of East Baton Rouge from conducting the pre-disciplinary hearing

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concerning petitioners until such reasonable time that counsel for all parties can appear and sufficiently prepare for such hearing.

DONE this ____ day of _____, 20____ at _____ o'clock ____ M. at Baton Rouge, Louisiana.

JUDGE, 19TH JUDICIAL DISTRICT COURT

PLEASE SERVE:

The City of Baton Rouge/Parish of East Baton Rouge
Through Mayor-President Sharon Weston Broome
222 St. Louis Street, 3rd Floor
Baton Rouge, Louisiana 70802