

FILED
10-30-2023
Clerk of Circuit Court
Brown County, WI
2022CV001027

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY
BRANCH 2

ANTRELL THOMAS, et al.,

Plaintiffs,

v.

Case No. 22-CV-1027

ANTHONY S. EVERS, in his official
capacity as the Governor of Wisconsin, et al.,

Defendants.

**DEFENDANTS' ANSWER AND DEFENSES TO THE
AMENDED CLASS ACTION COMPLAINT**

Defendants, by their undersigned counsel, answer Plaintiffs' amended class action complaint, (Doc. 48), as follows:

Answer to unnumbered paragraph on page 2 of the amended class action complaint: Defendants admit that Plaintiffs allege the factual allegations in their amended class action complaint and respond to those allegations as stated in this answer. Defendants deny that Plaintiffs' action may be maintained as a class action.

INTRODUCTION

1. The allegations in paragraph 1 are legal conclusions to which no response is required. To the extent paragraph 1 misstates the law or contains factual allegations, it is denied.

2. The allegations in paragraph 2 are legal conclusions to which no response is required. To the extent that paragraph 2 misstates the law or contains factual allegations, it is denied.

3. The allegations in paragraph 3 are legal conclusions to which no response is required. To the extent that paragraph 3 misstates the law or contains factual allegations, it is denied.

4. Defendants admit the allegations in paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 5.

6. Defendants deny the allegations in the first two sentences of paragraph 6. Defendants admit that Defendant Kelli Thompson stated during an April 17, 2022, interview that “I would say we are seeing a backlog somewhere coming out of the pandemic of about 35,000 cases, so pretty significant,” and said the words “it’s going to take years” during that same interview. Defendants affirmatively allege that Defendant Thompson’s statements—which can be heard at the video found at the URL in footnote 5 of the amended class action complaint—speak for themselves.

7. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 7.

8. Defendants deny the allegations in the first two sentences of paragraph 8. Defendants admit that Justice Rebecca Dallet wrote a dissent containing the statement alleged in the last sentence of paragraph 8.

9. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 9.

10. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 10.

11. The allegations in the first three sentences of paragraph 11 are legal conclusions to which no response is required. To the extent the allegations in the first three sentences of paragraph 11 misstate the law or contain factual allegations, they are denied. Defendants lack knowledge or information sufficient to form a belief as to the allegations in the last sentence of paragraph 11.

12. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 12.

13. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 16.

17. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 17.

18. Defendants admit the allegations in the second sentence of paragraph 18. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 18.

19. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 21.

22. Defendants admit the allegations in the first sentence of paragraph 22. Defendants lack knowledge or information sufficient to form a belief as to the remaining factual allegations in paragraph 22. Regarding the legal conclusion stated in the last sentence of paragraph 22, no response is required. To the extent that legal conclusion misstates the law or contains factual allegations, those allegations are denied.

23. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 23. Regarding the legal conclusion

stated in the last sentence of paragraph 23, no response is required. To the extent that legal conclusion misstates the law or contains factual allegations, those allegations are denied.

24. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 24.

25. Defendants deny the allegations in paragraph 25.

26. Defendants admit that Plaintiff Christian Pittman and the other named Plaintiffs are or were criminal defendants charged with offenses punishable by a term of imprisonment. Defendants deny that this action may be maintained as a class action and affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.) Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 26.

27. The allegations in paragraph 27 are legal conclusions to which no response is required. To the extent paragraph 27 misstate the law or contains factual allegations, it is denied.

28. Defendants deny the factual allegations in paragraph 28. Regarding the legal conclusion stated in paragraph 28, no response is required. To the extent that legal conclusion misstates the law or contains factual allegations, those allegations are denied.

29. Defendants deny the allegations in paragraph 29.

30. Defendants deny the allegations in the paragraph 30 on pages 11 and 12 of the amended class action complaint.

JURISDICTION AND VENUE

30. Responding to paragraph 30 on page 12 of the amended class action complaint, Defendants admit that Plaintiffs' action is a civil-rights action brought to seek relief for the alleged deprivation of their constitutional rights and affirmatively allege that Plaintiffs are entitled to no relief.

31. Defendants admit that Plaintiffs' action seeks relief for the alleged deprivation of their constitutional rights and affirmatively allege that Plaintiffs are entitled to no relief.

32. The allegations in paragraph 32 state a legal conclusion to which no response is required. To the extent paragraph 32 misstates the law or contains factual allegations, it is denied.

33. Defendants admit the allegations in paragraph 33.

34. The allegations in paragraph 34 state a legal conclusion to which no response is required. To the extent paragraph 34 misstates the law or contains factual allegations, it is denied.

PARTIES

I. Plaintiffs

35. Defendants admit that Plaintiff Antrell Thomas received an attorney on September 8, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 35.

36. Defendants admit that Plaintiff Melvin Clemons received an attorney on September 7, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 36.

37. Defendants admit that Plaintiff Christian Pittman received an attorney on September 7, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 37.

38. Defendants admit that Plaintiff Chance Kratochvil received an attorney on September 27, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 38.

39. Defendants admit that Plaintiff Kelsie McGeshick received an attorney on September 15, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 39.

40. Defendants admit that Plaintiff Jerome Brost received an attorney on September 1, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 40.

41. Defendants admit that Plaintiff Dwight Moore received an attorney on November 17, 2022, and lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 41.

42. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 42 and affirmatively allege that Plaintiff Sebastian Popovich received counsel on January 18, 2023. (Doc. 58:27.)

43. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 43 and affirmatively allege that Plaintiff Melinda Meshigaud received counsel on December 22, 2022. (Doc. 58:28–29.)

44. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 44 and affirmatively allege that Plaintiff Elmore Anderson received counsel on December 21, 2022. (Doc. 58:30.)

45. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 45 and affirmatively allege that Plaintiff Cashun Drake received counsel on January 5, 2023. (Doc. 58:31–32.)

46. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 46 and affirmatively allege

that Plaintiff Terry Johnson received counsel on December 20, 2022, and January 13, 2023. (Doc. 58:33–35.)

47. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 47 and affirmatively allege that Plaintiff Timothy Williams received counsel on January 11, 2023. (Doc. 58:36–37.)

48. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 48 and affirmatively allege that Plaintiff William Lowe received counsel on December 22, 2022. (Doc. 58:38–40.)

49. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 49 and affirmatively allege that Plaintiff Tivon Wells received counsel on January 5, 2023. (Doc. 58:41.)

50. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 50 and affirmatively allege that Plaintiff Davadae Bobbitt received counsel on January 4, 2023. (Doc. 58:42.)

51. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 51 and affirmatively allege that Plaintiff Donald Jueck received counsel on December 21, 2022. (Doc. 58:43–44.)

52. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 52 and affirmatively allege that Plaintiff Cory Hansen received counsel on January 17, 2023. (Doc. 58:45–46.)

II. Defendants

53. Defendants admit that Anthony S. Evers is the Governor of Wisconsin and that he was sued in his official capacity in this action. Defendants deny that Governor Evers is a defendant in this action, as this Court filed an order granting his motion to dismiss on September 21, 2023, which dismissed all claims against him. (Doc. 119.)

54. Defendants deny the allegations in paragraph 54 and affirmatively allege that Defendant Kelli Thompson resigned as Wisconsin State Public Defender on October 9, 2023.

55. Defendants admit the allegations in paragraph 55.

56. Defendants admit the allegations in paragraph 56.

57. Defendants admit the allegations in paragraph 57.

58. Defendants admit the allegations in paragraph 58.

59. Defendants admit the allegations in paragraph 59.

60. Defendants admit the allegations in paragraph 60.

61. Defendants admit the allegations in paragraph 61.

62. Defendants admit the allegations in paragraph 62.

63. Defendants admit the allegations in paragraph 63.

64. Defendants admit the allegations in the first sentence of paragraph 64. The allegations in the second sentence of paragraph 64 state a legal conclusion to which no response is required. To the extent these allegations misstates the law or contain factual allegations, they are denied.

GENERAL ALLEGATIONS

I. Wisconsin is constitutionally required to provide counsel to qualified defendants within a reasonable time after their initial appearances.

Answer to unnumbered heading on page 20 of the amended class action complaint: The allegations in the unnumbered heading on page 20 of the amended class action complaint are legal conclusions to which no response is required. To the extent these allegations misstate the law or contain factual allegations, they are denied.

65. The allegations in paragraph 65 are legal conclusions to which no response is required. To the extent paragraph 65 misstates the law or contains factual allegations, it is denied.

66. The allegations in paragraph 66 are legal conclusions to which no response is required. To the extent paragraph 66 misstates the law or contains factual allegations, it is denied.

67. The allegations in paragraph 67 are legal conclusions to which no response is required. To the extent paragraph 67 misstates the law or contains factual allegations, it is denied.

68. The allegations in paragraph 68 are legal conclusions to which no response is required. To the extent paragraph 68 misstates the law or contains factual allegations, it is denied.

69. The allegations in paragraph 69 are legal conclusions to which no response is required. To the extent paragraph 69 misstates the law or contains factual allegations, it is denied.

70. The allegations in paragraph 70 are legal conclusions to which no response is required. To the extent paragraph 70 misstates the law or contains factual allegations, it is denied.

71. The allegations in paragraph 71 are legal conclusions to which no response is required. To the extent paragraph 71 misstates the law or contains factual allegations, it is denied.

72. The allegations in paragraph 72 are legal conclusions to which no response is required. To the extent paragraph 72 misstates the law or contains factual allegations, it is denied.

II. Wisconsin carries out its constitutional obligation to timely provide counsel to qualified defendants through a statewide public defense system.

Answer to unnumbered heading on page 22 of the amended class action complaint: Defendants admit the allegations in the unnumbered heading on page 22 of the amended class action complaint.

73. Defendants admit the allegations in paragraph 73.

74. The allegations in paragraph 74 are legal conclusions to which no response is required. To the extent paragraph 74 misstates the law or contains factual allegations, it is denied.

75. The allegations in paragraph 75 are legal conclusions to which no response is required. To the extent paragraph 75 misstates the law or contains factual allegations, it is denied.

76. The allegations in paragraph 76 are legal conclusions to which no response is required. To the extent paragraph 76 misstates the law or contains factual allegations, it is denied.

77. Defendants admit the allegations in the first sentence of paragraph 77. The remaining allegations in paragraph 77 are legal conclusions to which no response is required. To the extent the remaining allegations in paragraph 77 misstate the law or contains factual allegations, they are denied.

78. The allegations in paragraph 78 are legal conclusions to which no response is required. To the extent paragraph 78 misstates the law or contains factual allegations, it is denied.

79. The allegations in paragraph 79 are legal conclusions to which no response is required. To the extent paragraph 79 misstates the law or contains factual allegations, it is denied.

III. Wisconsin's public defense system has failed—and is still failing—to timely provide attorneys to thousands of qualified defendants.

Answer to unnumbered heading on page 24 of the amended class

action complaint: Defendants deny the allegations in the unnumbered heading on page 24 of the amended class action complaint.

80. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 80.

81. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 81.

82. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 82.

83. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 83.

84. The allegations in the first three sentences of paragraph 84 are legal conclusions to which no response is required. To the extent the allegations in the first three sentences of paragraph 84 misstate the law or contain factual allegations, they are denied. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 84.

85. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 85.

86. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 86.

87. Defendants admit the allegations in the first sentence of paragraph 87. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 87.

IV. Wisconsin's deficient public defense system is causing a severe shortage of public defense attorneys, resulting in unconstitutional delays experienced by defendants.

Answer to unnumbered heading on page 27 of the amended class action complaint: Defendants deny the allegations in the unnumbered heading on page 27 of the amended class action complaint.

88. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 88.

89. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 89.

90. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 90.

91. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 91.

92. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 92.

93. Defendants admit the allegations in the first two sentences of paragraph 93. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 93.

94. Defendants admit that the Wisconsin Legislature increased the statutory rate to \$70 in 2020. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 94.

95. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 95.

96. Defendants admit that Plaintiff Clemons received an attorney on September 7, 2022. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 96.

97. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 97.

98. Defendants deny the allegations in paragraph 98.

IV. Efforts to address the public defense crisis have been ineffective, and judicial intervention is necessary.

Answer to unnumbered heading on page 30 of the amended class action complaint: Defendants deny the allegations in the unnumbered heading on page 30 of the amended class action complaint.

99. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 99.

100. The allegations in paragraph 100 are legal conclusions to which no response is required. To the extent paragraph 100 misstates the law or contains factual allegations, it is denied.

101. The allegations in the first and last sentences of paragraph 101 are legal conclusions to which no response is required. To the extent the allegations in the first and last sentences of paragraph 101 misstate the law or contain factual allegations, they are denied. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 101.

102. Defendants admit that the rate of compensation paid by the state to private attorneys assigned by SPD remained at \$40 per hour for another two years. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 102.

103. Defendants admit that the Wisconsin Legislature raised the rate of compensation for private attorneys assigned by SPD to \$70 per hour in 2020. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 103.

104. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 104.

105. Defendants deny the allegations in paragraph 105.

CLASS ACTION ALLEGATIONS

106. Defendants admit that Plaintiffs' action is brought as a class action and deny that it may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.) Defendants deny the remaining allegations in paragraph 106.

107. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

108. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

109. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

110. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

111. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

112. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

113. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

114. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

115. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

116. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

117. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

118. Defendants deny that this action may be maintained as a class action. Defendants affirmatively allege that this Court denied Plaintiffs' class-certification motion on September 21, 2023. (Doc. 118.)

CLAIMS FOR RELIEF

COUNT I

Violation of the Sixth and Fourteenth Amendments to the U.S. Constitution (All Plaintiffs and the Class Against All Defendants)

Answer to unnumbered heading on page 34 of the amended class action complaint: Defendants deny the allegations in the unnumbered heading on page 34 of the amended class action complaint.

119. Defendants reallege and incorporate by reference their responses to the allegations in the amended class action complaint as if set forth herein.

120. The allegations in paragraph 120 are legal conclusions to which no response is required. To the extent paragraph 120 misstates the law or contains factual allegations, it is denied.

121. The allegations in paragraph 121 are legal conclusions to which no response is required. To the extent paragraph 121 misstates the law or contains factual allegations, it is denied.

122. The allegations in paragraph 122 are legal conclusions to which no response is required. To the extent paragraph 122 misstates the law or contains factual allegations, it is denied.

123. The allegations in paragraph 123 are legal conclusions to which no response is required. To the extent paragraph 123 misstates the law or contains factual allegations, it is denied.

124. The allegations in paragraph 124 are legal conclusions to which no response is required. To the extent paragraph 124 misstates the law or contains factual allegations, it is denied.

125. Defendants admit that 14 or more days elapsed from the time of the named Plaintiffs' initial appearances to when they received counsel. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 125.

126. Defendants deny the allegations in paragraph 126.

COUNT II

Violation of Article 1, Section 7 of the Wisconsin Constitution (All Plaintiffs and the Class against All Defendants)

Answer to unnumbered heading on page 35 of the amended class action complaint: Defendants deny the allegations in the unnumbered heading on page 35 of the amended class action complaint.

127. Defendants reallege and incorporate by reference their responses to the allegations in the amended class action complaint as if set forth herein.

128. The allegations in paragraph 128 are legal conclusions to which no response is required. To the extent paragraph 128 misstates the law or contains factual allegations, it is denied.

129. The allegations in paragraph 129 are legal conclusions to which no response is required. To the extent paragraph 129 misstates the law or contains factual allegations, it is denied.

130. The allegations in paragraph 130 are legal conclusions to which no response is required. To the extent paragraph 130 misstates the law or contains factual allegations, it is denied.

131. The allegations in paragraph 131 are legal conclusions to which no response is required. To the extent paragraph 131 misstates the law or contains factual allegations, it is denied.

132. Defendants admit that 14 or more days elapsed from the time of the named Plaintiffs' initial appearances to when they received counsel. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 132.

133. Defendants deny the allegations in paragraph 133.

RESPONSE TO RELIEF REQUESTED: Defendants deny that Plaintiffs are entitled to the relief they requested.

FURTHER RESPONSE: Defendants deny any factual allegations in the amended class action complaint that are not expressly admitted in this answer.

DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted.

2. Defendants reserve the right to name additional defenses as they become known.

Defendants demand judgment as follows:

1. Denying the declaratory, injunctive, and any other form of relief

Plaintiffs' sought;

2. Dismissing the amended class action complaint on the merits and with prejudice as to all other causes of action; and

3. Awarding Defendants any other relief the Court deems just.

Dated this 30th day of October 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Defendants' Answer and Defenses to the Amended Class Action Complaint with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 30th day of October 2023.

Electronically signed by:

Clayton P. Kawski
CLAYTON P. KAWSKI
Assistant Attorney General