

DCC-077165

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEONCIO ELIZARRI, by his Special)	
Administrator LETICIA PEREZ,)	
GREGORY L. JORDAN, and)	
TED VELLEFF, individually and for)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	No. 17 cv 8120
)	
SHERIFF OF COOK COUNTY and)	Judge Seeger
COOK COUNTY, ILLINOIS,)	
)	
Defendants.)	

**DEFENDANT SHERIFF OF COOK COUNTY'S
ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

NOW COMES the Defendant, SHERIFF OF COOK COUNTY, by and through its attorneys, SANCHEZ DANIELS & HOFFMAN LLP, and as its Answer to Plaintiff's Second Amended Complaint, states as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. § 1343.

ANSWER: Defendant admits the allegations contained in this paragraph.

2. Leoncio Elizarrri was, at the time of his death on October 13, 2018, a resident of the Northern District of Illinois. Leticia Perez serves as the Special Administrator of the Estate of Leoncio Elizarrri pursuant to the Court's order of August 5, 2019. (ECF No. 73.)

ANSWER: Defendant admits the allegations contained in this paragraph.

3. Gregory L. Jordan and Ted Velleff are residents of the Northern District of Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations to contained in this paragraph but demands strict proof thereof.

4. Plaintiffs bring this case individually and for others similarly situated to assert the following three claims, described in greater detail below:

Claim Para Description

- | | | |
|---|-------|---------------------------------------|
| | 1-16 | Facts Common to All Claims |
| 1 | 17-22 | Fifth Amendment Takings |
| 2 | 23-39 | Fourteenth Amendment Damages |
| 3 | 40-43 | Fourteenth Amendment Equitable Relief |

ANSWER: Defendant admits the Plaintiffs are bringing claiming as stated in this Second Amended Complaint

5. Defendant Sheriff of Cook County is responsible for operating the Cook County Jail and is sued in his official capacity only.

ANSWER: Defendant admits the allegations contained in this paragraph.

6. Defendant Cook County is joined in this action pursuant to Carver v. Sheriff of LaSalle County, 324 F. 3d 947 (7th Cir. 2003).

ANSWER: Defendant admits the allegations contained in this paragraph.

FACTS COMMON TO ALL CLAIMS

7. The Cook County Jail is one of the largest single-site jails in the country and holds persons awaiting trial in Cook County who have been un-able to secure pre-trial release.

ANSWER: Defendant admits the allegations contained in this paragraph.

8. Detainees enter the Cook County Jail with various items of personal property.

ANSWER: Defendant admits, on occasion, detainees enter Cook County Jail accompanied by items of personal property.

9. Before 2010, the official policy of defendant Sheriff was to inventory and store all personal property (other than contraband or items of an evidentiary nature) that was in a detainee's possession at the time of arrest.

ANSWER: Defendant Sheriff Dart admits only that, prior to 2010, the "personal property" policies of the Cook County Sheriff's Orders were as stated in Cook County Department of Corrections General Order 14.21 and Cook County Sheriff's Office General Order 07-01, and potentially others. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph.

10. Starting in about 2010, defendant Sheriff revised the above described policy to limit the types of detainee personal property that would be inventoried and stored at the Jail.

ANSWER: Defendant Sheriff Dart admits only that Cook County Department of Corrections General Order 24.14.21.0 went into effect after 2010 and governed "CENTRALIZED CLOTHING AND PERSONAL PROPERTY." Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph.

11. The types of detainee personal property that the Sheriff will store at the Jail now includes the following 14 categories of property:

a) United States currency

- b) Clothing
- c) Credit cards/debit cards (the name on any card must match the inmate's identification)
- d) Transit cards
- e) Government-issued identification cards
- f) One plain wedding band
- g) Personal keys
- h) Belt
- i) Shoelaces
- j) Prescription eyeglasses
- k) Prescription medication
- l) Soft cover religious texts (e.g., Bible, Koran)
- m) Legal documents with soft cover only
- n) Necessary medical items directly related to the treatment of a medical condition

ANSWER: Defendant admits that certain items of personal property are appropriately inventoried and such inventory of property complies with all present policies and procedures of the Cook County Sheriff's Office.

12. Plaintiffs refer in this complaint to the above enumerated categories as "CCDOC Compliant Property."

ANSWER: Defendant admits that the Plaintiffs refer to various categories within this Second Amended Complaint and those categories are chosen by the Plaintiffs for the purposes of pleading.

13. Each year, more than 8,000 persons leave the Cook County Jail to serve sentences of imprisonment in the Illinois Department of Corrections.

ANSWER: Defendant admits that each year many detainees in the custody of the Cook County Department of Corrections are remanded by the courts to terms of imprisonment at the Illinois Department of Corrections but denies all remaining allegations.

14. At all times relevant, the Illinois Department of Corrections (“IDOC”) has limited the types of property that it would accept for a prisoner arriving from the Cook County Jail to the following:

- a) All monies held in the prisoner’s commissary account
- b) Identification cards
- c) Legal papers
- d) One religious book, such a Bible or a Koran
- e) Eyeglasses or contacts and case (soft)
- f) Personal correspondence
- g) Wedding Band (without stones)
- h) Photos (up to 24)

ANSWER: Defendant admits that the Illinois Department of Corrections limits certain personal property that it will accept from other outside jails and such policies and procedures are those of the Illinois Department of Corrections.

15. Plaintiffs refer in this complaint to the above categories as “IDOC Compliant Property” and to property that the IDOC will not accept as “IDOC non-compliant property.”

ANSWER: Defendant admits that the Plaintiffs refer to various categories within this Second Amended Complaint and those categories are chosen by the Plaintiffs for the purposes of pleading.

16. Various types of property are “CCDOC compliant” but are not “IDOC compliant,” as set out below:

- a) Clothing
- b) Credit cards/debit cards
- c) Transit cards
- d) Personal keys
- e) Belt
- f) Shoelaces

ANSWER: Defendant admits that the Illinois Department of Corrections limits certain personal property that it will accept from other outside jails and such policies and procedures are those the Illinois Department of Corrections.

THE TAKINGS CLAIM: DETAINEE CLOTHING

17. At all times relevant, the written policy of the Sheriff was to provide detainees leaving the Jail for the Illinois Department of Corrections with an opportunity to designate, on a form made available to the detainee on or before the day of transfer, a person to take custody of the detainee’s “IDOC non-compliant property.”

ANSWER: Defendant admits that specific detainees were advised by the Defendant of policies regarding property and that certain property could be retrieved at a specific time by a designated person. Further answering, said property could also be voluntarily donated or abandoned by a detainee.

18. At all times relevant, the widespread practice at the Cook County Jail has been to ignore the above described designation policy. At all relevant times, the widespread practice has been to seize the clothing of detainees leaving the Jail for the Illinois Department of Corrections and either destroy the clothing or make it available to other detainees being released from the Jail who do not have appropriate street clothing.

ANSWER: Defendant denies the allegations contained in this paragraph.

19. The above described practice was applied to clothing belonging to plaintiffs Elizarri, Jordan, and Velleff on the dates each left the Jail for the Illinois Department of Corrections:

- a. Elizarri left the Jail for the Illinois Department of Corrections on May 12, 2016.
- b. Jordan left the Jail for the Illinois Department of Corrections on May 2, 2008 and March 13, 2015.
- c. Velleff left the Jail for the Illinois Department of Corrections on January 24, 2014 and August 1, 2017.

ANSWER: Defendant denies the allegations contained in this paragraph, including sub-paragraphs 19(a) through 19(c).

20. To demonstrate the plausibility of the allegations about the existence of the above described practice, plaintiffs identify (by name, jail identification number, and date departed Jail for IDOC) 35 members of the putative class to whom the practice was applied in the attached Exhibit 1.

ANSWER: Defendant admits Plaintiffs have provided a list of individuals they wish to form a putative class relative to the Second Amended Complaint but denies all remaining allegations.

21. The Sheriff does not provide any compensation to a detainee whose property was taken in the manner described above.

ANSWER: Defendant admits compensation is not provided to detainees but denies any detainees are entitled to compensation regarding detainee property.

22. The above described widespread practice resulted in a violation of the Takings Clause of the Fifth Amendment to the Constitution of the United States.

ANSWER: Defendant denies the allegations contained in this paragraph.

**FOURTEENTH AMENDMENT DUE PROCESS CLAIM:
DESTRUCTION OF STORED DETAINEE PROPERTY**

23. Before 2008, the practice at the Cook County Jail was to destroy the “IDOC non-compliant” property (other than clothing) of prisoners transferred to the Illinois Department of Corrections unless the prisoner secured the services of another person to take custody of the property.

ANSWER: Defendant denies the allegations contained in this paragraph.

24. Starting in 2008, the Sheriff stopped destroying the “IDOC non-compliant” property referred to in the preceding paragraph; the Sheriff adopted a new procedure of storing that property while awaiting instructions from the court presiding over *Elizarri v. Sheriff*, 07-cv-2427, aff’d 901 F.3d 787 (7th Cir. 2016). Plaintiffs refer to this property as “stored detainee property.”

ANSWER: Defendant denies the allegations contained in this paragraph.

25. In 2011, the Sheriff hired an outside vendor to inventory the “stored detainee property.”

ANSWER: Defendant admits that, on occasion, the Defendant has hired various outside vendors to perform various tasks that may have included stored detainee property but denies all remaining allegations.

26. The outside vendor provided the Sheriff with an inventory of 57,641 sealed bags of “stored detainee property.”

ANSWER: Defendant admits that, on occasion, the Defendant has hired various outside vendors to perform various tasks that may have included stored detainee property but denies all remaining allegations.

27. Included within this inventory of the “stored detainee property” were 23,415 property bags that contained “IDOC compliant property” that should have been sent to the Illinois Department of Corrections, including cash and various forms of identification, such as a driver’s license or social security card.

ANSWER: Defendant admits that, on occasion, the Defendant has hired various outside vendors to perform various tasks that may have included stored detainee property but denies all remaining allegations.

28. Also included within the above referred inventory of “stored detainee property” were 386 property bags containing non-compliant CCDOC property such as valuable jewelry that could not have been voluntarily abandoned; this valuable jewelry included at least one diamond ring worth more than \$25,000.

ANSWER: Defendant denies the allegations contained in this paragraph.

29. One of the above described bags of “stored detainee property” contained property that had been seized from plaintiff Elizarri, four bags contained property belonging to defendant Jordan, and two contain property be-longing to plaintiff Velleff.

ANSWER: Defendant admits the Cook County Sheriff's Office retained the personal property bags associated with Plaintiffs Elizarri and Jordan, and returned property bags to both Plaintiffs prior to the filing of the present Complaint. Defendant further admits that it retained a property bag associated with former detainee Theodore Velleff. Defendant denies all remaining allegations.

30. At the direction of the Court, defendant Sheriff located and returned the Elizarri property during the pendency of this litigation.

ANSWER: Defendant admits that all of Plaintiff Elizarri's property was fully returned to him during the pendency of this lawsuit but denies all remaining allegations.

31. Also at the direction of the Court, defendant Sheriff located and returned two of the bags inventoried from plaintiff Jordan.

ANSWER: Defendant admits that all of Plaintiff Jordan's property was fully returned to him during the pendency of this lawsuit but denies all remaining allegations.

32. On July 19, 2019, during the course of this litigation, the Sheriff represented in a sworn answer to Interrogatory 4 of Plaintiffs' Second Set of Interrogatories (attached as Exhibit 2) that it was not currently disposing of "stored detainee property."

ANSWER: Defendant admits that it tendered a sworn Answer to Interrogatory No. 4 entitled Plaintiff's Second Set of Interrogatories, attached as Exhibit 2. Defendant submits that said responses speak for themselves.

33. The Sheriff also represented during the course of this litigation in its sworn answer to Interrogatory 7 of Plaintiffs' First Set of Interrogatories (attached as Exhibit 3) that it would not dispose of any of the "stored detainee property" unless and until it established "specific policies and procedures" and acted "pursuant to due notice to any former inmate."

ANSWER: Defendant denies the response to Interrogatory No. 7, attached as Plaintiff's Ex. 3, states that Defendant "will not" dispose of detainee personal property. Sheriff admits that it tendered a sworn answer to interrogatory #7 of Plaintiff's Interrogatories, and that the same is attached as Exhibit 3. Defendant submits that said responses speak for themselves.

34. For about ten years, the Sheriff has considered establishing and publicizing a procedure to return the "stored detainee property" to its owners.

ANSWER: Defendant denies the allegations contained this paragraph.

35. At all times relevant, the Sheriff has refused to provide notice to former detainees that their property was still being held at the Jail.

ANSWER: Defendant denies the allegations contained in this paragraph.

36. On September 28, 2020, the Sheriff revealed in this litigation that, contrary to the sworn interrogatory answers it served in 2019, the Sheriff began to dispose of the "stored detainee property" in late 2018. (Exhibit 4, Amended Answer to Second Set of Interrogatory No. 4.)

ANSWER: Defendant denies that Defendant represented that Defendant had begun to "dispose" of the collected personal property identified and retained based on the litigation *Elizarri v. Sheriff*, 07-cv-2427, aff'd 901 F.3d 787 (7th Cir. 2016). Defendant admits that it tendered its sworn Amended Answer to Second Set of Interrogatory No. 4, attached as Exhibit 4. Defendant submits that said responses speak for themselves.

37. The Sheriff also revealed on September 28, 2020 that the number of items of "stored detainee property" being held had shrunk from the 57,641 sealed bags inventoried in

2011 to “approximately 5,000” property bags. (Exhibit 4, Amended Answer to Second Set of Interrogatory No. 4.)

ANSWER: Defendant denies that it represented that the number of stored detainee property bags had “shrunk.” Defendant admits that it tendered its sworn Amended Answer to Second Set of Interrogatory No. 4, attached as Exhibit 4. Defendant submits that said responses speak for themselves.

38. The Sheriff did not give notice to the Court, to plaintiffs’ counsel, nor to any members of the putative class that it had begun to dispose of this property.

ANSWER: Defendant denies the allegations contained in this paragraph.

39. Plaintiffs and thousands of other similarly situated persons have been deprived of their property without due process of law by the Sheriff’s decision to dispose of the above referred property without notice and by the loss of “stored detainee property” identified in the 2011 inventory.

ANSWER: Defendant denies the allegations contained in this paragraph.

**FOURTEENTH AMENDMENT DUE PROCESS CLAIM:
PROPERTY HELD AWAITING INSTRUCTIONS**

40. The Due Process Clause of the Fourteenth Amendment requires the Sheriff to provide the best notice practicable to the persons whose property the Sheriff is holding as “stored detainee property” that their property is available for pickup.

ANSWER: Defendant denies the allegations contained in this paragraph.

41. The Sheriff has at all times relevant refused to provide any notice whatsoever to the persons whose property makes up the “stored detainee property” and has thereby irreparably harmed those persons.

ANSWER: Defendant denies the allegations contained in this paragraph.

42. The Due Process Clause of the Fourteenth Amendment also requires the Sheriff to safely secure the “stored detainee property.”

ANSWER: Defendant denies the allegations contained in this paragraph.

43. As reflected in the shrinkage of the number of items comprising the “stored detainee property,” the Sheriff has failed to safely secure that property and has thereby irreparably harmed the persons whose property can no longer be found among the “stored detainee property.”

ANSWER: Defendant denies the allegations contained in this paragraph.

CLASS

44. Plaintiffs seek to maintain this case as a class action for the following subclasses:

- a. **Fifth Amendment Takings Subclass:** All persons who left the Cook County Jail to serve a sentence in the Illinois Department of Corrections on and after November 9, 2015 and who did not designate a person to take custody of their clothing and who did not freely and voluntarily abandon that property.
- b. **Fourteenth Amendment Damages:** All persons transferred to the Illinois Department of Corrections from the Cook County Jail whose property remained in the custody of the Sheriff of Cook County and was sold, destroyed, or lost on and after November 9, 2015.
- c. **Fourteenth Amendment Equitable Relief:** All persons transferred to the Illinois Department of Corrections from the Cook County Jail whose property remains in the custody of the Sheriff of Cook County

ANSWER: Defendant admits that Plaintiffs seek to maintain a class action for the stated subclasses but denies any proposed class members are eligible for such class certification and further denies all remaining allegations.

45. Each proposed subclass satisfies the prerequisites of Rule 23(a) and certification is appropriate under Rules 23(b)(3) for subclasses (a) and (b), and under Rule 23(b)(2) for subclass (c).

ANSWER: Defendant denies the allegations contained in this paragraph.

46. Plaintiffs hereby demands trial by jury on any issue for which a jury is available.

ANSWER: Defendant admits the allegations contained in this paragraph.

WHEREFORE, the Defendant, SHERIFF OF COOK COUNTY, prays that this Court enters judgment in its favor, award it such fees and costs as allowed by law, and grant such further relief as this Court deems just, fair, and proper.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant SHERIFF OF COOK COUNTY, by and through his Special Assistant State's, SANCHEZ DANIELS & HOFFMAN LLP, and hereby asserts the following Affirmative Defenses:

1. Plaintiffs have failed to exhaust their administrative remedies as required by the Prison Litigation Reform Act, 42. U.S.C. § 1997.
2. To the extent that the Plaintiffs allege any claim against the Sheriff individually, his conduct was at all times objectively reasonable and did not violate any of Plaintiffs' clearly established constitutional rights. Accordingly, the Sheriff and his employees are entitled to the defense of qualified immunity.
3. The Plaintiffs failed to take reasonable measures to mitigate their alleged injuries and damages.
4. The Plaintiffs' claimed property has been returned to them and their claims have been fully satisfied.
5. Punitive damages are not available as to Defendant Sheriff of Cook County and his employees.

6. The Plaintiffs' claims are barred by all applicable statutes of limitation, the statute of repose, and laches.

7. Plaintiffs' claims are barred by the doctrine of res judicata and the doctrine of collateral estoppel and any other legal principles related to the claims brought forth in the Plaintiffs' Second Amended Complaint.

8. The Plaintiffs' claims are barred by the Illinois Tort Immunity Act, 735 ILCS 10/2-201 et seq. and other related protections provided to this Defendant and his employees.

WHEREFORE, based on the foregoing, the Defendant, Sheriff of Cook County, denies that Plaintiffs are entitled to any damages. Defendant prays that this Honorable Court grant judgment in his favor and against Plaintiffs on all aspects of their claims detailed in this Second Amended Complaint and further requests that this Honorable Court grant judgment in favor of Defendant, for attorney's fees, costs, and such other relief that this Court deems just and appropriate.

Respectfully submitted,

SANCHEZ DANIELS & HOFFMAN LLP

By: /s/Gerald M. Dombrowski
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed **Defendant Sheriff of Cook County's Answer to Plaintiff's Second Amended Complaint** via the ECF System and that a true and correct copy will be served electronically to all attorney(s) of record on May 21, 2021 and that this statement as set forth is true and correct.

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