

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

---

---

**JOSEPH SORRENTINO** and **LABRON C. NEAL**, on their own behalf and on behalf of all similarly situated people,

Plaintiffs,

v.

**SALVADOR A. GODINEZ**, Director of the Illinois Department of Corrections,

Defendants.

No. \_\_\_\_\_

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. 2012 was one of the hottest summers on record in Illinois.<sup>1</sup> Cellhouses throughout the Illinois prison system are poorly ventilated, and generally hold two men in spaces designed for one. When the outside temperature reaches 95—as it did repeatedly this summer, temperatures inside cells on upper tiers at Stateville Correctional Center, Menard Correctional Center, and Pontiac Correctional Center can reach 120 degrees and more. Prisoners have died from this heat.

---

<sup>1</sup> National Oceanic and Atmospheric Administration. National Weather Service Weather Forecast Office.

[http://www.crh.noaa.gov/news/display\\_cmsstory.php?wfo=lot&storyid=86523&source=0](http://www.crh.noaa.gov/news/display_cmsstory.php?wfo=lot&storyid=86523&source=0), last visited August 22, 2012.

2. In anticipation of this deadly heat, in June, prisoners were told they could buy extra fans. Many did. All fans are approved by the Department, and can only be purchased from the prison commissary. A copy of Warden's Bulletin #2012-37 is attached as Exhibit #1.

3. Then on July 17<sup>th</sup>, with no warning, the Department reversed course, and announced that it was confiscating all "extra" fans. A copy of Warden's Bulletin #2012-54 is attached as Exhibit #2. Prisoners were not compensated for the costs, and no other means for cooling the cells was provided.

4. At the same time, the Department began confiscating prisoners' typewriters—again, typewriters that had been approved by the Department and purchased through the prison commissary. A copy of Warden's Bulletin #2012-51 is attached as Exhibit #3.

5. In Count One of their complaint, plaintiffs---on their own behalf and on behalf of a class of similarly situated prisoners---complain that the Department confiscated their property without compensation, in violation of the Fifth Amendment, made applicable to the states through the Fourteenth Amendment. In Count Two, they allege that the Department's confiscation violated the contracts clause of the United States Constitution, Article I §10. In Count Three, plaintiffs allege that the confiscation constituted a breach of their property contracts with the Department.

## **JURISDICTION**

6. This Court, has subject matter jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. § 1331, as this action arises under the Constitution and the laws of the United States; and pursuant to 28 U.S.C. § 1343(a)(3), as Plaintiffs allege that Defendants deprived them of their rights, privileges or immunities secured by the United States Constitution.

7. This Court has supplemental jurisdiction over plaintiffs' common law breach of contract claim pursuant to 28 U.S.C. § 1367, because that claim is so related to those claims over which this Court has original jurisdiction.

8. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

9. This Court has jurisdiction to grant injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

## **VENUE**

10. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b), because Plaintiffs reside at Stateville Correctional Center, which is located in Joliet, Illinois, in this district and a substantial number of the events and omissions giving rise to Plaintiffs' claims occurred in this district.

## **PARTIES**

### **I. Plaintiffs**

11. Plaintiff Joseph Sorrentino is an individual currently incarcerated at Stateville Correctional Center ("Stateville").

12. On November 29, 2011, Mr. Sorrentino purchased a typewriter from the Stateville commissary at a cost of \$266.16.

13. On July 23, 2012, Mr. Sorrentino's typewriter was confiscated on orders pursuant to Warden's Bulletin #2012-51. A copy Warden's Bulletin #2012-51 is attached as Exhibit #3.

14. Mr. Sorrentino purchased a fan for which he paid approximately \$26, which he received from the Stateville Commissary on March 27, 2012. A copy of Mr. Sorrentino's fan contract is attached as Exhibit #4.

15. On July 16, 2012, Mr. Sorrentino's fan was confiscated pursuant to Warden's Bulletin #2012-54. A copy of Warden's Bulletin is attached as Exhibit #2.

16. Plaintiff LaBron C. Neal is currently incarcerated at Stateville.

17. He purchased a fan sometime prior to July, 2012 from the Stateville Commissary. A copy of Mr. Neal's fan contract is attached as Exhibit #5.

18. On July 16, 2012, Mr. Neal's fan was confiscated pursuant to Warden's Bulletin #2012-54.

## **II. Defendant**

19. Salvador A. Godinez is the Director of the Illinois Department of Corrections ("Department") and is responsible for the day-to-day operations of the Department. Mr. Godinez is sued in his individual and official capacities.

## **III. Class Allegations**

20. Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on

behalf of a class of all prisoners housed in maximum security prisons operated by the Illinois Department of Corrections who have had fans or typewriters confiscated pursuant to policies implemented by Director Godinez.

21. **Numerosity:** The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). As of August 1, 2012, there are over 6,500 prisoners confined in maximum security prisons operated by the Department. Upon information and belief over 10% of those prisoners have had either a fan or a typewriter confiscated pursuant to the policies implemented by Director Godinez.

22. **Commonality:** There are questions of law and fact common to members of the class. Such questions include, but are not limited to: whether Director Godinez implemented a policy of confiscating fans and typewriters which had been purchased from prison commissaries in compliance with Department rules; whether Director Godinez offered compensation to any of the prisoners whose property was confiscated; and whether Director Godinez's confiscation of prisoners' property without compensation violated the takings clause of the Fifth Amendment, the contracts clause of the Constitution of the United States, or breached the Department's contracts with the prisoners.

23. **Typicality:** The claims of the Plaintiffs are typical of those of the Plaintiff Class, as their claims arise from the same policies, practices, or course of conduct; and their claims are based on the same theory of law as the class's claims.

24. **Adequacy:** Plaintiffs are capable of fairly and adequately protecting the interests of the Plaintiff class because Plaintiffs do not have any interests

antagonistic to the class. Plaintiffs are represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class action litigation.

25. **Rule 23(b)(1):** This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(1) because, upon information and belief, the number of class members is in excess of 600, and the prosecution of separate actions by individuals would create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for the Defendant.

26. **Rule 23(b)(2):** This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because Class Defendants' policies, practices, actions, and omissions that form the basis of this complaint are common to, and apply generally to, all members of the class, and the injunctive and declaratory relief sought is appropriate and will apply to all members of the class. The policy requiring confiscation of prisoners' fans and typewriters was implemented state-wide and was promulgated, disseminated, and enforced from the central headquarters of Department.

27. **Rule 23(b)(3):** The common questions of law and fact predominate over any individual questions, and a class action is superior to all other means of resolving the issues raised in this complaint.

**COUNT I**  
**(Takings Clause Violation)**

28. Plaintiffs reallege and incorporate by reference each of the allegations of paragraphs 1 through 27.

29. In Count I, Plaintiffs seek damages based on Defendant's Takings Clause violation.

30. The Fifth Amendment to the United States Constitution prohibits the taking of private property without just compensation.

31. The Fifth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment to the United States Constitution.

32. At all times relevant hereto, Plaintiff Joseph Sorrentino had a vested property right in the confiscated typewriter.

33. At no time was Plaintiff Joseph Sorrentino provided with just compensation for the confiscated typewriter.

34. At all times relevant hereto, the Plaintiffs had a vested property right in the confiscated fans.

35. At all times relevant hereto, the confiscated fans were private property of the Plaintiffs.

36. At no time were Plaintiffs provided with just compensation for the confiscated fans.

**Count II**  
**(Contract Clause Violation)**

37. Plaintiffs repeat and incorporate by reference each of the allegations of paragraphs 1 through 36.

38. In Count II, Plaintiffs seek damages based on the Department's Contract Clause violation.

39. Article I, Section 10, Clause 1 of the United States Constitution states, “No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .”

40. The benefit of receiving personal property is a promise made by the Department to the Plaintiffs.

41. This promise is relied upon by the Plaintiffs, who supported their promise by paying money from their prison accounts.

42. The contract between Plaintiffs and the Department was memorialized in a “Property Contract” entered into by Plaintiffs, which set forth their rights and responsibilities in connection with their purchase and possession of fans and typewriters. Exhibits 4 and 5.

43. The Department’s promise and the Plaintiffs paying of money out of their accounts create and constitute legally enforceable contract rights.

44. The Department’s actions, of confiscating personal property which had been properly acquired in valid and enforceable contracts, coupled with unjust compensation, is an impairment of Plaintiffs’ contract rights.

**Count III  
(Breach of Contract)**

45. Plaintiffs repeat and incorporate by reference each of the allegations of paragraphs 1 through 44.

46. In Count III, Plaintiffs seek damages based on the Department breaching the Contracts. Plaintiffs seek, as actual damages, benefits to which the Plaintiffs are due under the Contracts.



47. On or around November 29, 2011, IDOC agreed to sell Plaintiff Joseph Sorrentino a typewriter in consideration for the agreed upon sum of \$266.16.

48. The Department agreed to sell Plaintiffs' fans in consideration for the agreed upon sum of \$26.00.

49. At all times relevant hereto, the Contracts constituted valid and enforceable contracts between the Plaintiffs and the Department.

50. The contract between Plaintiffs and the Department was memorialized in Contracts entered into by Plaintiffs, which set forth their rights and responsibilities in connection with their purchase and possession of fans and typewriters. Exhibits 4 and 5.

51. Plaintiffs performed all of their obligations under the Contracts.

52. IDOC breached the Contracts by confiscating the fans and the typewriter.

53. As a direct and proximate result of the Department's breach of the Contracts with Plaintiff Joseph Sorrentino, Plaintiff Joseph Sorrentino has been damaged in the amount exceeding \$292.16.

54. As a direct and proximate result of the Department's breach of the Contract with Plaintiff LaBron C. Neal, Plaintiff LaBron C. Neal has been damaged in the amount exceeding \$26.00.

**WHEREFORE**, Plaintiffs ask that this Honorable Court enter a judgment:

a. Declaring that the Defendant's confiscation of Plaintiff Joseph Sorrentino's typewriter, and the taking of typewriters from all members of the

plaintiff class constitutes a taking without just compensation, and thus violates the Fifth Amendment of the Constitution.

b. Declaring that the Defendant's confiscation of the property/fans/typewriters owned by Plaintiffs and all members of the Plaintiff Class is a taking without just compensation, and thus violates the Fifth Amendment of the Constitution.

c. Declaring that the Defendant's confiscation of the typewriter owned by Joseph Sorrentino and all typewriters owned by members of the Plaintiff Class which had been properly acquired pursuant to a valid and enforceable contract, coupled with no just compensation, is an impairment of Plaintiff Joseph Sorrentino's contract rights in violation of the contract clause of the Constitution of the United States.

d. Declaring that the Defendant's confiscation of the fans owned by Plaintiffs and by members of the Plaintiff Class which had been properly acquired in valid and enforceable contracts, coupled with no just compensation, is an impairment of Plaintiffs' contract rights in violation of the contract clause of the Constitution of the United States.

e. Declaring that the Defendant breached a valid and enforceable contract by confiscating the typewriter owned by Joseph Sorrentino and the typewriters owned by the Plaintiff Class.

f. Declaring that the Defendant breached valid and enforceable contracts by confiscating Plaintiffs' fans.

- g. Directing the Defendant to either return or provide just compensate to Plaintiffs for their confiscated personal property.
- h. Awarding Plaintiffs' reasonable attorneys' fees and costs
- i. Granting such other relief as the Court deems proper.

Respectfully submitted,

S/Alan S. Mills  
Attorney for the Plaintiffs

Alan Mills  
Uptown People's Law Center  
4413 North Sheridan  
Chicago, Illinois 60640  
(773) 769-1411