

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL BERGAMASCHI, <i>et al.</i> , on behalf of	:
themselves and all others similarly situated,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
ANDREW M. CUOMO, Governor of New York	:
State, in his official capacity, <i>et al.</i> ,	:
	:
Defendants.	:
-----	X

1:20-cv-2817 (CM)

DEFENDANT ANDREW M.
CUOMO'S ANSWER TO
AMENDED COMPLAINT

Defendant Andrew M. Cuomo, by his attorney, Letitia James, Attorney General of the State of New York, hereby answers the Amended Complaint of Michael Bergamaschi and Frederick Roberson, on behalf of themselves and all others similarly situated, filed on May 12, 2020, as follows:

PRELIMINARY STATEMENT

1. Denies the allegations contained in paragraph 1.
2. Denies the allegations contained in paragraph 2, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.
3. Denies the allegations contained in paragraph 3, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.
4. Denies the allegations contained in paragraph 4, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures and "technical parole violation" as that term is undefined, vague, and ambiguous.

5. Denies the allegations contained in paragraph 5, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures and "technical violations" as that term is undefined, vague, and ambiguous.

6. Denies the allegations contained in paragraph 6, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures and "technical violations" as that term is undefined, vague, and ambiguous.

7. Denies the allegations contained in paragraph 7, except denies knowledge or information sufficient to form a belief as to allegations pertaining to unidentified "people" as that term is undefined, vague, and ambiguous.

8. Denies the allegations contained in paragraph 8, except denies knowledge or information sufficient to form a belief as to allegations pertaining to Rikers Island and Department of Corrections and Correctional Health service.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9.

10. Denies the allegations contained in paragraph 10, except admits that Plaintiffs seek the relief described therein.

PARTIES

11. Denies the allegations contained in paragraph 11, except denies knowledge and information sufficient to form a belief as to Plaintiff Bergamaschi's race, age, and residency.

12. Denies the allegations contained in paragraph 12, except denies knowledge and information sufficient to form a belief as to Plaintiff Roberson's race, age, and residency.

13. Admits that Defendant Andrew M. Cuomo is Governor of New York State; the remaining allegations contained in paragraph 13 are legal conclusions to which no response is required.

14. Admits that Defendant Tina Stanford is the Chairperson of the New York State Board of Parole; the remaining allegations contained in paragraph 14 are legal conclusions to which no response is required.

FACTS

15. States that the allegations contained in paragraph 15 set forth legal conclusions as to which no response is required.

16. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16, except admits that Plaintiffs define the term “parole” in the Amended Complaint as set forth therein.

17. States that the allegations contained in paragraph 17 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to parole procedures.

18. States that the allegations contained in paragraph 18 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to New York’s parole regulations.

19. States that the allegations contained in paragraph 19 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to New

York's parole revocation procedures and "technical violations" as that term is vague, and ambiguous.

20. States that the allegations contained in paragraph 20 set forth legal conclusions as to which no response is required.

21. States that the allegations contained in paragraph 21 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

22. States that the allegations contained in paragraph 22 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

23. States that the allegations contained in paragraph 23 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

24. Denies the allegations contained in paragraph 24, except denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

25. Admits only that Governor Cuomo issued executive orders on the dates referenced and respectfully refers the Court to those executive orders for the contents thereof.

26. Denies the allegations contained in paragraph 26, except denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

27. Denies the allegations contained in paragraph 27, except denies knowledge and information sufficient to form a belief as to the allegations pertaining to criminal court proceedings in courts in New York City and efforts to conduct video parole revocation hearings.

28. Denies the allegations contained in paragraph 28, except denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

29. Denies the allegations contained in paragraph 29, except admits that Governor Cuomo held a press conference on April 1, 2020.

30. States that the allegations contained in paragraph 30 set forth legal conclusions as to which no response is required.

31. States that the allegations contained in paragraph 31 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies the allegations containing in paragraph 31, except denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

32. States that the allegations contained in paragraph 32 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies knowledge and information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures.

33. Denies the allegations contained in paragraph 33, except denies knowledge or information sufficient to form a belief as to allegations pertaining to the referenced statistics, New

York's parole revocation procedures, and "technical violations" and "technical parole violations" as those terms are undefined, vague, and ambiguous.

34. Denies the allegations contained in paragraph 34, except denies knowledge or information sufficient to form a belief as to allegations pertaining to the referenced statistics, the referenced report, New York's parole revocation procedures and "technical violations" as that term is undefined, vague, and ambiguous.

35. Denies the allegations contained in paragraph 35, except denies knowledge and information sufficient to form a belief as to the truth of the allegations pertaining to New York's parole revocation procedures and "technical violations" as that term is undefined, vague, and ambiguous, and concerning the "2018 op-ed" and "follow-up 2020 op-ed" in an unidentified publication.

36. States that the allegations contained in paragraph 36 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Governor Cuomo denies the allegations contained in paragraph 36, except denies knowledge and information sufficient to form a belief as to the truth of the allegations concerning New York's parole revocation procedures and New York City jails.

37. Denies the allegations contained in paragraph 37, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York's parole revocation procedures, "technical violations" as that term is undefined, vague, and ambiguous, and the "Columbia University Justice Lab report," or the accuracy of said report.

38. Denies the allegations contained in paragraph 38, except admits only that Governor Cuomo made a public announcement regarding the potential release of some alleged parole violators due to COVID-19 and denies knowledge or information sufficient to form a belief as to

allegations pertaining to Parole Board and “technical parole violations” as that term is undefined, vague, and ambiguous, and New York City jails.

39. Denies the allegations contained in paragraph 39, except denies knowledge or information sufficient to form a belief as to allegations pertaining to New York’s parole revocation procedures, “technical parole violations” as that term is undefined, vague, and ambiguous, and the referenced Mayor’s Office of Criminal Justice 2018 (“MOCJ’s”) Report, or the accuracy of said report.

40. Denies knowledge or information sufficient to form a belief as to allegations pertaining to New York’s parole revocation procedures and the MOCJ’s Report, or the accuracy of said report.

41. Denies the allegations contained in paragraph 41, except denies knowledge or information sufficient to form a belief as to allegations pertaining to unidentified “people,” “individuals,” “families,” and “parents” as those terms are undefined, vague, and ambiguous.

42. Denies the allegations contained in paragraph 42, except denies knowledge and information sufficient to form a belief as to the allegations concerning New York City jails and Rikers Island and allegations pertaining to “technical parole violations” as that term is undefined, vague, and ambiguous.

43. Denies the allegations contained in paragraph 43, except denies knowledge and information sufficient to form a belief as to the allegations concerning the conditions of New York City jails and the unidentified “man with severe asthma.”

44. Denies the allegations contained in paragraph 44, except denies knowledge and information sufficient to form a belief as to the allegations concerning Rikers Island and the New York City Board of Corrections.

45. Denies the allegations contained in paragraph 45, except denies knowledge and information sufficient to form a belief as to the allegations concerning the undated “remarks” attributed to Defendant Governor Cuomo referenced therein.

46. Denies the allegations contained in paragraph 46, except denies knowledge and information sufficient to form a belief to the allegations concerning other jurisdictions.

47. Denies the allegations contained in paragraph 47, except denies knowledge and information sufficient to form a belief as to the allegations concerning other jurisdictions.

INDIVIDUAL PLAINTIFF ALLEGATIONS

48. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 48.

49. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 49.

50. Denies knowledge and information sufficient to form a belief as to the allegations pertaining in paragraph 50.

51. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 51.

52. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 52.

53. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 53.

54. Denies the allegations contained in paragraph 54, except denies knowledge and information sufficient to form a belief as to the allegations pertaining to New York’s parole revocation procedures.

55. Denies allegations contained in paragraph 55, except denies knowledge and information sufficient to form a belief as to the allegations concerning the state of mind of Plaintiff Bergamaschi and his wife and son.

56. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 56.

57. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 57.

58. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 58.

59. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 59.

60. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 60.

61. Denies knowledge and information sufficient to form a belief as to the allegations pertaining to paragraph 61.

62. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 62.

63. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 63.

64. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 64.

CLASS ACTION ALLEGATIONS

65. Denies the allegations contained in paragraph 65, except admits that Plaintiffs purport to bring this action pursuant to the Federal Rules of Civil Procedure 23(a) and (b)(2).

65(a). Denies the allegations contained in paragraph 65(a), except denies knowledge and information sufficient to form a belief as to the allegations related to the New York City jails.

65(b). Denies the allegations contained in paragraph 65(b).

65(c). Denies the allegations contained in paragraph 65(c).

65(d). Denies the allegations contained in paragraph 65(d), except denies knowledge and information sufficient to form a belief as to the allegations related to class counsels' experience.

66. Denies the allegations contained in paragraph 66.

JURISDICTION AND VENUE

67. Denies the allegations contained in paragraph 67, except admits that Plaintiffs purport to proceed on the jurisdictional bases set forth therein.

68. Denies the allegations contained in paragraph 68, except admits that Plaintiffs purport to proceed on the jurisdictional bases set forth therein.

69. Denies the allegations contained in paragraph 69, except admits that Plaintiffs purport to assert that venue is appropriate under the statute cited therein.

CLAIM FOR RELIEF

70. Defendant Governor Cuomo repeats his responses to paragraphs 1 to 69 as if fully set forth herein.

71. Denies the allegations contained in Paragraph 71.

PRAYER FOR RELIEF

Denies that Plaintiffs are entitled to any of the relief requested in the “Prayer for Relief” Section of Plaintiffs’ Amended Complaint.

DEFENSES

AS AND FOR A FIRST DEFENSE

The Amended Complaint fails to state a claim for which relief can be granted.

AS AND FOR A SECOND DEFENSE

Defendant Governor Cuomo is entitled to sovereign immunity.

AS AND FOR A THIRD DEFENSE

Defendant Governor Cuomo is entitled to absolute immunity.

AS AND FOR A FOURTH DEFENSE

Defendant Governor Cuomo is not a proper party.

AS AND FOR A FIFTH DEFENSE

Defendant Governor Cuomo is not personally responsible for, or involved in, any acts of commission or omission alleged by Plaintiffs and cannot be held responsible for any agents, servants, employees, or co-workers.

AS AND FOR A SIXTH DEFENSE

Plaintiffs’ claims may be barred, in whole or in part, by the doctrines of res judicata and collateral estoppel.

AS AND FOR A SEVENTH DEFENSE

Any injuries or damages alleged in the Amended Complaint were caused, in whole or in part, by Plaintiffs’ own culpable or negligent conduct.

AS AND FOR AN EIGHTH DEFENSE

The action is barred, in whole or in part, by the Eleventh Amendment and the doctrine of sovereign immunity.

AS AND FOR A NINTH DEFENSE

The injuries allegedly sustained by Plaintiffs in this action were caused, in whole or in part, by one or more parties for whose conduct Defendant Governor Cuomo is not responsible.

AS AND FOR A TENTH DEFENSE

The Court can decline to exercise jurisdiction under the Declaratory Relief Act.

WHEREFORE, Defendant Governor Cuomo respectfully prays that the relief requested by Plaintiffs be in all respects denied, and that the Amended Complaint be dismissed in its entirety, with costs and disbursements, and the granting of such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 9, 2020

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