

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-22572-CIV-KING/O'SULLIVAN

EMMA YAIZA DIAZ et al.,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State
of Florida, et al.,

Defendants.

**DEFENDANT LESTER SOLA'S
ANSWER AND DEFENSES TO THE THIRD AMENDED CLASS ACTION COMPLAINT**

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant Lester Sola, Miami-Dade County Supervisor of Elections ("Supervisor Sola"), answers the Third Amended Class Action Complaint ("TAC") as follows:

ANSWER

1. Supervisor Sola denies the allegations contained in paragraph 1 of the TAC.
2. The allegations contained in paragraph 2 of the TAC relate to claims dismissed by this Court and no answer is required. See Order on Motion to Dismiss dated February 27, 2007 (D.E. 201) ("*Order*").
3. Supervisor Sola admits the allegations contained in paragraph 4 of the TAC.
4. Supervisor Sola denies the allegations contained in paragraph 4 of the TAC.
5. Supervisor Sola denies the allegations contained in paragraph 5 of the TAC.
6. Supervisor Sola denies the allegations contained in paragraph 6 of the TAC.
7. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 7 of the TAC.
8. Supervisor Sola denies the allegations contained in paragraph 8 of the TAC.
9. Supervisor Sola denies the allegations contained in paragraph 9 of the TAC. See Order at 15. ("Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]").
10. Supervisor Sola denies the allegations contained in paragraph 10 of the TAC. See Order at 15. ("Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]").
11. Supervisor Sola denies the allegations contained in paragraph 11 of the TAC. See

Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

12. The allegations contained in paragraph 12 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

13. The allegations contained in paragraph 13 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

14. The allegations contained in paragraph 14 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

15. The allegations contained in paragraph 15 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

16. The allegations contained in paragraph 16 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

17. The allegations contained in paragraph 17 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

18. The allegations contained in paragraph 18 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

19. Supervisor Sola denies the allegations contained in paragraph 19 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

20. The allegations contained in paragraph 20 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

21. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 21 of the TAC.

22. Supervisor Sola denies the allegations contained in paragraph 22 of the TAC.

23. Supervisor Sola denies the allegations contained in paragraph 23 of the TAC.

24. Supervisor Sola admits the allegations contained in paragraph 24 of the TAC.

25. Supervisor Sola admits the allegations contained in paragraph 25 of the TAC.

26. Supervisor Sola admits the allegations contained in paragraph 26 of the TAC.

27. Supervisor Sola admits the allegations contained in paragraph 27 of the TAC.

28. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 28 of the TAC.

29. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the

allegations contained in paragraph 29 of the TAC.

30. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 30 of the TAC.

31. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 31 of the TAC.

32. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 32 of the TAC.

33. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 33 of the TAC.

34. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 34 of the TAC.

35. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 35 of the TAC.

36. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 36 of the TAC.

37. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 37 of the TAC.

38. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 38 of the TAC.

39. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 39 of the TAC.

40. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 40 of the TAC.

41. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 41 of the TAC.

42. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 42 of the TAC.

43. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 43 of the TAC.

44. Paragraph 44 of the TAC is not applicable to Supervisor Sola and thus does not require a response.

45. Paragraph 45 of the TAC is not applicable to Supervisor Sola and thus does not require a response.

46. Paragraph 46 of the TAC is not applicable to Supervisor Sola and thus does not require a response.

47. Paragraph 47 of the TAC is not applicable to Supervisor Sola and thus does not require a response.

48. Paragraph 48 of the TAC is not applicable to Supervisor Sola and thus does not require a response.

49. Paragraph 49 of the TAC is not applicable to Supervisor Sola and thus does not require a response.

50. Supervisor Sola admits the allegations contained in paragraph 50 of the TAC.

51. Supervisor Sola admits the allegations contained in paragraph 51 of the TAC.

52. Supervisor Sola admits the allegations contained in paragraph 52 of the TAC.

53. Supervisor Sola admits the allegations contained in paragraph 53 of the TAC.

54. Paragraph 54 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

55. Supervisor Sola admits the allegations contained in paragraph 55 of the TAC.

56. Supervisor Sola admits the allegations contained in paragraph 56 of the TAC.

57. Supervisor Sola admits the allegations contained in paragraph 57 of the TAC.

58. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 58 of the TAC.

59. Supervisor Sola denies the allegations contained in paragraph 59 of the TAC.

60. Supervisor Sola admits the allegations contained in paragraph 60 of the TAC.

61. Supervisor Sola admits the allegations contained in the first sentence of paragraph 61 of the TAC Supervisor Sola and denies all other allegations contained in that paragraph.

62. Supervisor Sola denies the allegations contained in paragraph 62 of the TAC.

63. Supervisor Sola denies the allegations contained in paragraph 63 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

64. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 64 of the TAC.

65. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the

allegations contained in paragraph 65 of the TAC.

66. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 66 of the TAC.

67. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 67 of the TAC.

68. Supervisor Sola denies the allegations contained in paragraph 68 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

69. Supervisor Sola denies the allegations contained in paragraph 69 of the TAC. See Order.

70. Supervisor Sola admits the allegations contained in paragraph 70 of the TAC.

71. Supervisor Sola admits the allegations contained in paragraph 71 of the TAC.

72. Paragraph 72 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

73. Paragraph 73 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

74. Paragraph 74 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

75. Supervisor Sola denies the allegations contained in paragraph 75 of the TAC.

76. Paragraph 76 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

77. Supervisor Sola denies the allegations contained in paragraph 77 of the TAC.

78. Paragraph 78 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

79. The allegations contained in paragraph 79 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

80. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 80 of the TAC.

81. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 81 of the TAC.

82. Supervisor Sola denies the allegations contained in paragraph 82 of the TAC.

83. The allegations contained in paragraph 83 of the TAC relate to claims dismissed by

this Court and no answer is required. See Order.

84. The allegations contained in paragraph 84 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

85. The allegations contained in paragraph 85 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

86. The allegations contained in paragraph 86 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

87. The allegations contained in paragraph 87 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

88. The allegations contained in paragraph 88 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

89. The allegations contained in paragraph 89 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

90. The allegations contained in paragraph 90 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

91. The allegations contained in paragraph 91 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

92. The allegations contained in paragraph 92 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

93. The allegations contained in paragraph 93 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

94. The allegations contained in paragraph 94 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

95. The allegations contained in paragraph 95 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

96. The allegations contained in paragraph 96 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

97. The allegations contained in paragraph 97 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

98. Supervisor Sola admits the allegations contained in paragraph 98 of the TAC.

99. Paragraph 99 of the TAC cites to Florida Statutes that speak for itself and thus does not require a response.

100. Supervisor Sola denies the allegations contained in paragraph 100 of the TAC.

101. Supervisor Sola denies the allegations contained in paragraph 101 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

102. The allegations contained in paragraph 102 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

103. The allegations contained in paragraph 103 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

104. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 104 of the TAC.

105. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 105 of the TAC.

106. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 106 of the TAC.

107. Supervisor Sola denies the allegations contained in paragraph 107 of the TAC.

108. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 108 of the TAC.

109. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 109 of the TAC.

110. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 110 of the TAC.

111. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 111 of the TAC.

112. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 112 of the TAC.

113. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 113 of the TAC.

114. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 114 of the TAC.

115. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 115 of the TAC.

116. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the

allegations contained in paragraph 116 of the TAC.

117. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 117 of the TAC.

118. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 118 of the TAC.

119. Supervisor Sola is without sufficient knowledge to answer, and therefore denies, the allegations contained in paragraph 119 of the TAC.

120. Supervisor Sola denies the allegations contained in paragraph 120 of the TAC.

121. Supervisor Sola denies the allegations contained in paragraph 121 of the TAC.

122. Supervisor Sola denies the allegations contained in paragraph 122 of the TAC.

123. Supervisor Sola denies the allegations contained in paragraph 123 of the TAC.

124. Supervisor Sola denies the allegations contained in paragraph 124 of the TAC.

125. Supervisor Sola denies the allegations contained in paragraph 125 of the TAC.

126. Supervisor Sola denies the allegations contained in paragraph 126 of the TAC.

127. Supervisor Sola denies the allegations contained in paragraph 127 of the TAC.

128. Supervisor Sola denies the allegations contained in paragraph 128 of the TAC.

129. Supervisor Sola repeats the responses to paragraphs 1 through 128 as if fully set forth herein and therefore denies paragraph 129.

130. Supervisor Sola denies the allegations contained in paragraph 130 of the TAC.

131. Supervisor Sola denies the allegations contained in paragraph 131 of the TAC.

132. Supervisor Sola denies the allegations contained in paragraph 132 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

133. Supervisor Sola denies the allegations contained in paragraph 130 of the TAC.

134. Supervisor Sola denies the allegations contained in paragraph 130 of the TAC.

135. Supervisor Sola repeats the responses to paragraphs 1 through 128 as if fully set forth herein and therefore denies paragraph 135.

136. Supervisor Sola denies the allegations contained in paragraph 136 of the TAC.

137. Supervisor Sola admits the allegations contained in paragraph 137 of the TAC.

138. Supervisor Sola denies the allegations contained in paragraph 138 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

139. Supervisor Sola denies the allegations contained in paragraph 139 of the TAC.

140. Supervisor Sola denies the allegations contained in paragraph 140 of the TAC. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]”).

141. Supervisor Sola denies the allegations contained in paragraph 141 of the TAC.

142. Supervisor Sola denies the allegations contained in paragraph 142 of the TAC.

143. Supervisor Sola denies the allegations contained in paragraph 143 of the TAC.

144. The allegations contained in paragraph 144 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

145. The allegations contained in paragraph 145 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

146. The allegations contained in paragraph 146 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

147. The allegations contained in paragraph 147 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

148. The allegations contained in paragraph 148 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

149. The allegations contained in paragraph 149 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

150. The allegations contained in paragraph 150 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

151. The allegations contained in paragraph 151 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

152. The allegations contained in paragraph 152 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

153. The allegations contained in paragraph 153 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

154. The allegations contained in paragraph 154 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

155. The allegations contained in paragraph 155 of the TAC relate to claims dismissed by this Court and no answer is required. See Order.

DEFENSES

1. Plaintiffs have failed to state a claim under Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure. See Order at 15. (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period].”)

2. Plaintiffs failed to mitigate damages so their claims are barred or must be reduced accordingly.

3. Plaintiffs’ injuries and damages, if any, were caused by their own negligence or wrongdoing. Accordingly, any claim against Supervisor Sola is barred or reducible to the full extent of Plaintiffs’ negligence or wrongdoing.

4. Plaintiffs’ injuries and damages, if any, were caused by the negligence or wrongdoing of third parties. Accordingly, any claim against Supervisor Sola is barred or reducible to the full extent of negligence or wrongdoing by third parties.

5. Supervisor Sola is entitled to a set off for any proceeds received by Plaintiffs for any injuries or damages alleged against Supervisor Sola.

WHEREFORE, Supervisor Sola requests that the Court enter judgment for Supervisor Sola, with Plaintiff to bear Supervisor Sola’s costs of suit, including attorney’s fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

MURRAY A. GREENBERG
MIAMI-DADE COUNTY ATTORNEY

By: **s/ Oren Rosenthal**

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2007 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Oren Rosenthal
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