

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
Bridgeport Division**

KENNETH DESORMES

X

Plaintiff

Case No. 3:14cv215(VLB)

Vs.

STATE OF CONNECTICUT DEPARTMENT
OF SOCIAL SERVICES; BRYAN HOCTER,
in his official and/or individual capacity as
Supervisor for Support Enforcement
Services of Stamford; SUPPORT
ENFORCEMENT SERVICES;
DELAWARE CHILD SUPPORT
ENFORCEMENT AGENCY; CT BUREAU
OF CHILD SUPPORT ENFORCEMENT;
JOHN DOE 1-2

Defendants

April 20th, 2014

X

**SECOND AMENDED COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY RELIEF.**

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. §1983 challenging the constitutionality of certain provisions and/or portions of the Uniform Interstate Family Support Act (“UIFSA” §201-211, §501-507, §601-615), codified in Connecticut as C.G.S. §46b-213(g-n); both facially and as applied against the Plaintiff by the State of Delaware and the State

of Connecticut (Hereinafter “The States”). Plaintiff also seeks an injunction prohibiting Connecticut (hereinafter “The State”) and the other defendants from continuing to engage in the same acts that caused harmed to the Plaintiff as well as a declaration that the challenged provisions of C.G.S. §46b-213 (g-n) and UIFSA facially and/or as applied are unconstitutional.

2. This is a civil right action brought pursuant to 42 U.S.C. §1983 in which the Plaintiff seeks compensatory and punitive damages against the defendants in their individual capacities and compensatory damages against the State and Municipal defendants for violation of the plaintiff's rights under the Fourth, Fifth, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendments of the United States Constitution.

3. Plaintiff further seeks declaratory relief that as applied by the Defendants, §201-211 of UIFSA; C.G.S. §46b-213(g-n); and Del. Code. Ann. Tit. 3, § 3104 (along with other statutes and procedures which may be identified in the course of this action as “Protocols”) violated Plaintiff's rights under the Fourth, Fifth, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendments of the United States Constitution.

4. Defendants' actions have already deprived and will continue to deprive the Plaintiff of his due process rights provided under the United States Constitution.

5. Each and every act of the Defendants allege herein was committed under the color of state law.

6. Plaintiff further seeks permanent injunctive relief prohibiting all the Defendants from engaging in the conduct declared to be in violation of the Plaintiff's constitutionally protected rights and from continuing to apply statutes or protocols in the manner complained of herein.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to the following statutes:
- A. 28 U.S.C. §1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States.
 - B. 28 U.S.C. §1343 (3) and (4), which gives district courts jurisdiction over actions to secure civil rights extended by the United States government.
 - C. 28 U.S.C. §1367, which gives the district court supplemental jurisdiction over state law claims.
 - D. 28 U.S.C. §§2202-2202, Federal Declaratory Judgment Act of 1946.
 - E. 28 U.S.C. §1332, Federal Diversity Jurisdiction.
8. Venue is appropriate in this judicial district under 28 U.S.C. §1391(b) because the events that gave rise to this Complaint (i.e. the Contempt Actions) occurred in this district.

PARTIES

9. Plaintiff, Kenneth Desormes is a citizen of the United States and resides in the county of Fairfield, State of Connecticut, which is part of the Bridgeport division of this District.

10. Defendant Bryan Hocter is the supervisor of Support Enforcement Services of Stamford (“SES”), a unit of the Stamford Superior Court responsible for the administration and enforcement of child support payments within the lower Fairfield county region of Connecticut.

11. Defendant, CT Bureau of Child Support Enforcement (“BCSE”) under the umbrella of the Department of social services is the single state agency responsible for the administration of child support payments in Connecticut. The State agency operates through Support Enforcement Services and are both referred hereafter collectively as “SES”.

12. Defendant, Delaware Child Support Enforcement (“DCSE”) is the municipal agency responsible for the administration of child support payments in New Castle County, Delaware.

13. Defendant, Support Enforcement Services (“SES”) is a municipality operating within this District with its office in the Superior Court of Stamford, CT.

14. John Doe 1-2 are professionals residing in Connecticut who aided and abated in the deprivation of Plaintiff’s civil rights.

UIFSA & THE FULL FAITH AND CREDIT FOR CHILD

SUPPORT ORDERS ACT

15. In 1992, the National Conference of Commissioners on Uniform State Laws promulgated UIFSA. In 1993, two states, Texas and Arkansas enacted the law. By 1998, all U.S. Jurisdictions had enacted UIFSA due to a Congressional mandate that was conditioned on the States receiving federal funds for adopting the law. Since inception, UIFSA and its predecessor URESA have been or continue to be the source of many controversial decisions involving jurisdiction, due process, and overall fairness. For example, several portions of UIFSA that address modification and enforcement of support Orders are unconstitutional and in contradiction with the Full Faith and Credit for Child Support Orders Act (FFCCSOA). As a result, States statutes that are derived from UIFSA are in violation of the 14th amendment and the Equal Protection clause of the Constitution. The law and/or its application further violates the constitution by making it difficult for some obligors to modify a support Order, while others are freely granted modification. The law and/or its application also allow for some obligors to avoid ever being found in Contempt while others are aggressively prosecuted.

In sum, UIFSA as drafted and/or as enforced is racially charged. 70% of child support obligors are indigent and that number is mostly made up of blacks and hispanics. Because the law provides no clear standard on the determination of an obligor's "ability to pay" a Court ordered support

obligation, it fails to equally protect without proper justification this particular segment of the population. As a result, indigent individuals mostly minorities around the country are being hauled to jail on contempt charges at a time when unemployment/underemployment are at historic high and food stamp applications are also hitting historic levels. This racial injustice has caused the New Jersey Supreme Court early this year to institute reforms in its family Courts by establishing clear standards on “ability to pay” hearings.

In conclusion, without proper intervention UIFSA as drafted and/or applied will continue to invite prejudice and racial bias in the Connecticut family court system because the State’s statutes derived from the law are totally unconstitutional.

GENERAL AND PROCEDURAL BACKGROUND

16. On December 9th, 2002, the mother gave birth to a child out of wedlock in the State of Delaware.
17. The mother initiated child support proceedings in immediately after the birth.
18. On Sept. 24, 2003, the Plaintiff received a phone call from the family court of Delaware regarding child support obligations for the alleged child in this case.
19. A few months later, Plaintiff received a summons to attend a Court Hearing on December 29, 2003 in the state of Delaware, although Plaintiff

had never resided in Delaware or made an appearance in Delaware support action.

20. However, Plaintiff filed a Motion for Telephonic conference as directed by Court officials, but his motion was denied resulting in a default support order of \$678/month that was entirely based on mother's testimony.

21. Plaintiff made several attempts to modify the Order but was obstructed by mother's perpetual requests for continuance and Commissioner Carrow's persistent refusal to grant the Plaintiff a telephonic conference well in defiance of UIFSA §316(f).

22. Alternatively, Plaintiff proceeded to make cash payments directly to the Mother until Delaware began garnishing his wages, intercepting his tax returns, and placing liens on his bank accounts.

23. In 2005, the Mother moved to North Carolina and later ask that state to register the Order in Connecticut so it can be enforced through the CT judicial system.

24. Plaintiff objected to the registration and raised several defenses, including Laches and Estoppel pursuant to UIFSA §607. (see, exhibit A)

25. On 10/16/06 a Hearing was held but the Court failed to reach a final decision on the registration matter.

26. In 2007, the Plaintiff moved to North Carolina to pursue a career in legal advocacy and hopefully even the score in Delaware.

27. In June of 2008, while Plaintiff was visiting family in Connecticut he was detained on contempt charges regarding the said “unregistered

Order”, although the State had never established proper jurisdiction in this case (see, exhibit B).

28. It remains a mystery how the State knew of the Plaintiff whereabouts and how the mother knew to fax a bunch of protective order paperwork to the police station where Plaintiff was being detained.

29. A month later, the Connecticut family Court dismissed all petitions and closed their case citing lack of jurisdiction.

30. In 2011, more than 3yrs later, Delaware sought registration of their Order in Connecticut because the mother had moved back to Delaware and the Plaintiff was back in Connecticut.

31. Plaintiff once again contested the registration and raised mostly the same defenses that he raised back in 2006 pursuant to UIFSA §607. (See, exhibit A); therefore prompting the Court to require the State and the Plaintiff to submit a brief.

32. After several hearings, the Attorney General (AG) for Connecticut instructed the Court in legal error that the State will withdraw its motion for registration because the case had already been registered in 2006 and thus there was no reply brief necessary.

33. The AG provided no factual or legal findings to support that argument, and most importantly the judge declined to make any findings or issue any orders to support the AG’s argument.

34. This action ensued because the State denied the Plaintiff a fair hearing when it refused to consider the plaintiff's defenses as were outlined in his brief and his motions.

35. This action ensued because the States aggressively prosecuted the Plaintiff without proper jurisdiction.

36. As a result of the States' actions, Plaintiff has suffered irreparable harm and damages in amount to be determined at trial.

COUNT I

VIOLATION OF 11 USC §362(b)(2)(A) and §362(a)(3)

(Against all Defendants)

37. Plaintiff repeats and realleges the allegations of paragraphs (1) through (36).

38. The defendants conspired to deprive the Plaintiff of his civil rights.

39. Plaintiff, at all times relevant to this Complaint had an open bankruptcy case (No. 10-50079) in the Bridgeport division of the District of Connecticut.

40. Under the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") of 2005 and as amended by Pub. L. 109-8 §214, Plaintiff is protected from civil contempt proceedings involving child support obligations in accordance with the Automatic Stay provision of 11 USC §362(b)(2)(A).

41. Although the Automatic Stay against personal property of the Plaintiff terminated in August 2010 upon discharge, the Stay remained effective against “property of the estate or of property from the estate.” see, 11 USC §362(a)(3)

42. Civil contempt proceedings dealing with child support enforcement are not a recognizable exception to the Automatic Stay and moreover property exempted in a bankruptcy remains protected from pre-petition debts, even if those debts were non-dischargeable.

43. The defendants violated 11 USC §362(a)(3) on 1/27/2014 when they caused the Plaintiff to be found in Contempt in an attempt to deprive him of a \$10,000.00 cash exemption which had recently been approved by the Bankruptcy Trustee.

COUNT II

VIOLATION OF 28 U.S.C. §1738B

(Against all Defendants)

44. Plaintiff repeats and realleges the allegations of paragraphs (1) through (43).

45. The States acted contrary to their authority under the Full Faith and Credit for Child Support Orders Act (FFCCSOA).

46. FFCCSOA requires that states recognize other states’ child support orders so long as there was subject matter jurisdiction, personal jurisdiction, and proper notice.

47. The Delaware Court never established personal and subject matter jurisdiction over the Plaintiff because he never resided in Delaware and the child was not conceived in Delaware.

48. Furthermore, FFCCSOA is in tension with UIFSA when it comes to the modification of support orders, however in this District FFCCSOA preempts UIFSA. See, *Bowman v. Bowman*, 82 A.D.3d 144, 917 N.Y.S.2d 379 (2011).

49. Under UIFSA, only Delaware could modify the Plaintiff's order whereas FFCCSOA list three conditions when a State may modify another State's Order. See, U.S.C. §1738B(e).

50. According to those conditions, Connecticut improperly failed and continue to illegally refuse to modify the Plaintiff's Order.

51. Because Delaware issued their Order without proper jurisdiction and because the States illegally refused to modify said Order, Plaintiff suffered damages in an amount to be determined at Trial.

COUNT III

VIOLATION OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS

(Against all Defendants)

52. Plaintiff repeats and realleges the allegations of paragraphs (1) through (51)

53. UIFSA sets the guidelines for establishing a foreign support Order and registering that Order in the State of interest for purposes of

enforcement. Comparatively, each State individually develops their own statutes to mirror the goals of UIFSA.

54. On 6/27/2008, Plaintiff was wrongfully arrested by the city of Stamford on a capias for contempt charges stemming from an alleged failure to comply with the Delaware support Order. (See, exhibit B)

55. This action was done in clear violation of FFCCSOA, UIFSA and Connecticut state laws which preclude enforcement of defective foreign Orders (See, C.G.S. §46b-71).

56. UIFSA states that a foreign Order can only be enforced after an Order confirming that Order has been issued by a Magistrate of the Court. The Court records are devoid of any such Order ever being issued at the time of Plaintiff's arrest.

57. The Plaintiff was wrongfully arrested recently again on the same charges although the States continues to fail to meet the requirements of FFCCSOA and UIFSA (i.e. personal and subject matter jurisdiction; proper registration of a foreign order).

58. The issues of personal and subject matter jurisdiction have never been litigated in Delaware or Connecticut although they've been raised several times before and after Plaintiff's arrest.

59. The defendants are further in violation of Plaintiff's due process rights by failing to properly train their staff on UIFSA requirements, by failing to establish proper jurisdiction over the Plaintiff, by failing to accurately and properly credit the Plaintiff's support payments, by issuing

Court orders that are inconsistent with the judge's findings from the hearings.

60. Finally, the State's Attorneys and SES acted out of the scope of their authority by overzealously prosecuting their actions against the Plaintiff and more particularly refusing to allow Plaintiff to modify his Order and improperly registering said in Connecticut.

COUNT IV

VIOLATION OF EQUAL PROTECTION

61. The State of Connecticut applies different protocols for child support obligors with foreign orders v. obligors with domestic orders.

62. Obligor with foreign orders are not given equal protection of law.

63. Unlike their domestic counterparts they are restricted from modifying their orders, they are more susceptible to contempt charges, they are deprived of access to justice, they are not assigned case managers, and their payments are not accurately credited.

64. Plaintiff as a foreign Order obligor has been a victim of all the acts cited above and as a result has suffered damages in amount to be determined at Trial.

COUNT V

VIOLATION OF 18 U.S.C. §242

(Against all Defendants)

65. Plaintiff repeats and realleges the allegations of paragraphs (1) through (64).

66. The defendants conspired to deprive the Plaintiff of his civil rights.

67. To ensure fairness and adhere to due process principles, UIFSA was amended in 2001 to substitute the word “may” for “shall” in sec. 316(f): “In a proceeding under this Act, a tribunal of this State shall permit a party or witness residing in another State to be deposed or to testify under penalty of perjury by telephone.”

68. Plaintiff on several occasions filed a “Motion for Telephonic Conference” with the Delaware Family Court system for purposes of modifying his Order but the Court repeatedly denied or rejected his motion.

69. The Delaware Family Court's pattern of requiring a Motion for Telephonic conference then later denying/rejecting Plaintiff's Motion makes it impossible to Modify a Support Order and is in clear contradiction with the goals of UIFSA and 18 U.S.C. §242.

70. Likewise, the AG's actions under color of law to withdraw her motion for registration in Connecticut was clearly intended to deny the Plaintiff the opportunity to present defenses which he is afforded under C.G.S. §46b-213m and thus her actions clearly violated 18 U.S.C. §242.

71. Finally, Count I under this Complaint is a violation of 18 U.S.C. §242.

COUNT VI

INEFFECTIVE ASSISTANCE OF COUNSEL

(Against the State)

72. Plaintiff repeats and realleges the allegations of paragraphs (1) through (71).
73. In *Turner v. Rogers*, the Supreme Court ruled that there is no requirement for appointment of Counsel in civil contempt proceedings, however in the absence thereof there must be a clear standard for determining an obligor's ability to comply with a support Order.
74. In the State of Connecticut, Counsel is routinely appointed by the Court in Contempt proceedings involving child support.
75. Plaintiff was found in Contempt because he failed to receive proper assistance of Counsel.
76. With proper assistance of Counsel, Plaintiff would not have been found in Contempt because C.G.S. §46b-71 prevents enforcement of a default foreign Order where an entry of appearance by both parties is lacking.
77. With proper assistance of Counsel, Plaintiff would not have been found in Contempt because he was in full compliance with the last Order entered by the Court under Magistrate Fusco and no new orders had been issued.
78. The State of Connecticut committed legal malpractice when it appointed Counsel for the Plaintiff without any legal requirement to do so (See, *Turner v. Rogers*); and Counsel failed to provide basic, minimal and adequate representation to the Plaintiff.

COUNT VII

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against DCSE and SES)

79. Plaintiff repeats and realleges the allegations of paragraphs (1) through (78).
80. The defendants conspired to deprive the Plaintiff of his constitutional rights.
81. Commissioner Carrow of Delaware persistently denied/rejected on procedural grounds the Plaintiff's motions for telephonic conference and motions to modify his support Order.
82. Meanwhile, the Commisioner routinely granted continuances to the mother in her attempts to stall the Plaintiff's Order modification request.
83. The Commisioner also generously approved unsubstantiated protective Orders filled by the Mother which were clearly intended to prevent the Plaintiff from visiting his child.
84. DCSE and the Delaware Family Court allowed the Mother to leave the State of Delaware for more than 5 yrs without disclosing the whereabouts of the child.
85. The States' support enforcement units have compounded the problem in this case by failing to adhere to the proper protocols that are required under UIFSA, state laws and federal laws.
86. The defendants' actions have caused great emotional distress onto the Plaintiff and damages in an amount to be determined at Trial.

CONCLUSION

UIFSA codified in Connecticut as C.G.S. sec. 46b-213(e-r) is in flagrant contradiction with FFCCSOA. The laws conflict in two aspects: (1) subject matter jurisdiction when registering a foreign support Order and (2) modification of a foreign support Order. FFCCSOA does not adhere to the strict requirement of UIFSA that an Obligor must be a resident of the State in which he/she is seeking modification. Additionally, FFCCSOA unlike UIFSA holds that lack of subject matter jurisdiction is a valid defense during the registration of a foreign support Order. Consequently, the application of FFCCSOA to the case at bar would have yielded a totally different result.

It is well established in American legal jurisprudence that when there is a conflict of laws, Federal statutes should always preempt State laws. In light of FFCCSOA, Plaintiff is seeking recourse in Federal Court regarding the Constitutionality of UIFSA and clarification on the legality of the corresponding State statutes that were applied against him. In support of his action, Plaintiff would like to reiterate that the defendants failed to properly establish jurisdiction in this case, failed to modify the support Order without good cause, and failed to implement protocols that do not infringe on Due Process.

Finally, under UIFSA choice of law provision it has been determined that the laws of the forum state should control in the enforcement of a foreign support Order. Connecticut in 2005 enacted C.G.S. §46b-71 which

states that “the requirement of an entry of appearance by both parties is a threshold requirement for enforcement” of a foreign Order. Because the Plaintiff never resided in Delaware and the Plaintiff never made an entry of appearance in Delaware, C.G.S. §46b-71 should render the Delaware Order unenforceable in Connecticut. As a result of the States’ misguided protocols on child support enforcement and their erroneous application of the law, the Plaintiff’s rights under the Fourth, Fifth, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendments of the United States Constitution have been egregiously violated.

REQUEST FOR RELIEF

WHEREFORE: The plaintiff is seeking: (1) injunctive relief and compensatory damages against the Support Enforcement Services of Stamford and DCSE; (2) declaratory and injunctive relief against all defendants; (3) compensatory damages against the State of Connecticut and Delaware.

RESPECTFULLY SUBMITTED THIS 23rd, DAY OF APRIL, 2014.

/s/ Kenneth Desormes
KENNETH DESORMES
222 Purchase Street #130
Rye, NY 10580
914.826.6400

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the foregoing **Second Amended Complaint** to all persons on the **Service List** and the addressees set forth below via email and/or United States mail on the 23rd day of April, 2014.

Caitlin Calder
State Attorney General Office
55 Elm street box#120
Hartford, CT 06106

Raymond riggat
23 East Main Street
Clinton, CT 06413

/s/ Kenneth Desormes
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