

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**EMMA DOE, ET AL**

**VERSUS**

**JAMES D. CALDWELL, ET AL**

\* **CIVIL ACTION**  
\*  
\* **No. 12-1670 “F” (5)**  
\*  
\* **JUDGE FELDMAN**  
\*  
\* **MAG. JUDGE CHASEZ**

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**RESPONSE TO PLAINTIFFS’ MOTIONS FOR  
SUMMARY JUDGMENT AND FOR CLASS CERTIFICATION**

**NOW INTO COURT**, through undersigned counsel, come defendants defendants James D. “Buddy” Caldwell, in his official capacity as Attorney General of the State of Louisiana, James M. LeBlanc, in his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections (DPSC), Genie Powers, in her official capacity as Deputy Secretary of DPSC, Barry Matheny, in his official capacity as Director of the DPSC Division of Probation and Parole, Colonel Michael D. Edmonson, in his official capacity as Superintendent of the DPSC, Office of State Police, Charles Dupuy, in his official capacity as Deputy Superintendent of the DPSC Office of State Police, and Stephen Campbell, in his official capacity as Commissioner of the DPSC, Office of Motor Vehicles, who herein respectfully respond to plaintiffs’ motions for summary judgment and for class certification.

1.

The defendants respectfully decline, at this time, to respond to plaintiffs’ motions for summary judgment and class certification on the grounds that they have invoked sovereign immunity *from suit*. As such, they are immune from engaging in burdensome merits-based

responsive pleadings until such time as it is established that they are not entitled to sovereign immunity. The Fifth Circuit has held:

Because sovereign immunity protects states from suit, *Puerto Rico Aqueduct, [ & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144-45, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993)]*, orders denying dismissal on the basis of sovereign immunity are immediately appealable regardless of the district court's reasons for its decision. In *Sherwinski v. Peterson*, 98 F.3d 849, 851 (5th Cir.1996), this court maintained jurisdiction over an appeal from a district court order that denied a sovereign immunity-based motion to dismiss against the Texas Department of Criminal Justice. The district court in that case had stated that “[u]ntil the factual and legal basis of the case has been further developed, no defendants will be dismissed.” *Id.* We held that because the very object and purpose of sovereign immunity is to protect the state from the “coercive process of judicial tribunals at the instance of private parties,” and because the value of sovereign immunity is “for the most part lost as litigation proceeds past motion practice,” we had jurisdiction over the appeal pursuant to the collateral order doctrine. *Id.*

*Texas v. Caremark, Inc.*, 584 F.3d 655, 658 (5th Cir. 2009). Considering the foregoing, the defendants respectfully decline to respond to plaintiffs’ merits-based motion for summary judgment and their motion for class certification at this time.

2.

The defendants respectfully reserve any and all substantive arguments they may have to plaintiffs’ motion for summary judgment and motion for class certification.

Respectfully submitted,

**JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL**

**BY:** s/Phyllis E. Glazer  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 22, 2012, I electronically filed the foregoing using the court's CM/ECF system which will provide a notice of electronic filing to All Counsel of Record.

s/Phyllis E. Glazer  
**PHYLLIS E. GLAZER**