

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

NICOLE CICI,)	
)	
Plaintiff, on behalf of herself)	
and all others similarly situated,)	
)	
vs.)	Case No. 19-2196
SHELBY COUNTY,)	JURY DEMANDED
CITY OF MEMPHIS, and)	
THE DOWNTOWN MEMPHIS)	
COMMISSION)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

COMES NOW the Plaintiff, Nicole Cici, on behalf of herself and all others similarly situated, by and through her attorneys of record, Wells & Associates, PLLC, and John P. Pritchard, and for this her Class Action Complaint and against the Defendants, states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff Nicole Cici is a citizen and resident of Desoto County, Mississippi.
2. Shelby County is a county in the State of Tennessee, with a county seat of Memphis, TN and its Mayor being Lee Harris, with offices located at the Vasco A. Smith County Administration Building, 160 N. Main Street, Memphis, TN 38103.
3. The City of Memphis is a municipality in the State of Tennessee, with its Mayor being Jim Strickland and having its offices located at Memphis City Hall, 125 N. Main St., Memphis, TN 38103.
4. The Downtown Memphis Commission was created by Shelby County and City of

Memphis ordinances. Its office is located at 114 North Main Street, Memphis, TN 38103. Its President is Jennifer Oswalt and the Chairman of the Board is Deni Reilly.

5. All or part of the wrongful conduct and/or transactions described herein originated in the State of Tennessee and, more specifically, in this District, where Defendants maintain their principal places of business and the citations were issued.
6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. 1331 as this cause arises from violations of rights under 42 U.S.C. §1983. The Court has supplemental jurisdiction over the related state law claims.
7. Since certain Defendants reside in this District and the wrongful acts occurred in this District, venue is proper in this District under 28 U.S.C §1391.

II. FACTUAL ALLEGATIONS

8. The Downtown Memphis Commission Board is comprised of 10 private-sector members appointed by the county and city mayors and approved by the City Council and County Commission, a city mayor representative, a county mayor representative, a city council member, a county commissioner, and two state legislators.
<https://www.downtownmemphiscommission.com/boards/dmc-board/>
9. Shelby County Ordinance Sec. 32-153 provides: Enforcement of any power or authority granted the commission under this article or as mall management agency of district no. I or district management corporation of district no. II or any rules and regulations issued by the commission pursuant to such authority shall be delegated by the commission to any employee of the commission staff, who may obtain a summons through the city municipal court, and also to any city police officer, who may issue summons or misdemeanor citation or effect a physical arrest for violations.

In addition to the remedies provided herein, the commission may issue an order requiring any violator to cease or suspend the facility causing such violation and/or initiate court proceedings to enjoin such violation.

10. City of Memphis Ordinance Sec 2-84-13 provides: Enforcement of any power or authority granted the commission under this chapter or as mall management agency of District I or district management corporation of District II or any rules or regulations issued by the commission pursuant to such authority shall be delegated by the commission to any employee of the commission staff, who may obtain a summons through the city municipal court, and also to any city police officer, who may issue a summons or misdemeanor citation or effect a physical arrest for violations. In addition to the remedies provided herein, the commission may issue an order requiring any violator to cease or suspend the facility causing such violation and/or initiate court proceeding to enjoin such violation.
11. The City of Memphis, on its own website, defines a citation as “a parking ticket that should be paid within 15 days after receipt.” It goes on to state “If the ticket is not paid within 15 days after receipt, the violator must appear in court on the scheduled court date on the bottom of the ticket and additional costs may be assessed. Any vehicle that has three or more unpaid citations issued against it is subject to booting, towing, and/or impoundment until all the tickets (citations and summons) are paid for that vehicle. Late fees are assessed on unpaid citations. Any citation ticket unpaid 60 days after the issue date will incur a \$20 late fee. If the ticket remains unpaid 90 days after the issue date it will incur an additional \$40 late fee for a total of \$60 in late fees as of the 90th day.”

<https://memphistn.gov/cms/one.aspx?pageId=12090862>

12. The City of Memphis defines a summons as “a ticket issued by an officer to a violator and signed by the violator. Unless the ticket is marked mandatory.” The City’s website explains “If the ticket is not paid within 10 days of the court date, the violator must appear in court on the scheduled court date on the bottom of the ticket and additional costs may be assessed. Failure to pay a default judgment within 30 days may result in the suspension of the violator’s driver’s license.” See link ¶13.
13. The City defines an ordinance summons as “a ticket issued for ordinance violations other than traffic offenses and requires a mandatory court appearance.” See link ¶13.
14. The City of Memphis and Shelby County Ordinances provide employees of the Downtown Memphis Commission the authority to obtain a summons through the city municipal court only.
15. The Ordinances do not provide the employees of the Downtown Memphis Commission the authority to issue or write tickets, in particular here, parking tickets. That authority is reserved for officers of the Memphis Police Department.
16. Downtown Memphis Commission employees receive ticket books from the Memphis City Court Clerk’s office. *See City of Memphis Response to Appellant’s Statement of Undisputed Material Facts in Support of Motion for Summary Judgment and Statement of Additional Undisputed Facts Proffered by Appellee* ¶ 1, CT-003469-16, Circuit Court of Tennessee for the Thirtieth Judicial District.
17. Despite having no authority to issue or write parking tickets, employees of the Downtown Memphis Commission regularly issue and write parking tickets in the downtown Memphis area.

18. The City of Memphis has admitted that Downtown Memphis Commission employees issue tickets in the Downtown Memphis area. *See City of Memphis Response to Appellant's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment and Statement of Additional Undisputed Facts Proffered by Appellee* ¶ 1, 2, CT-003469-16, Circuit Court of Tennessee for the Thirtieth Judicial District.
19. The parking tickets require those receiving them to pay the fines outlined above, have their vehicle impounded, or potentially forfeit their driver's license.
20. Plaintiff, and the other members of the class as described below, received such a parking ticket issued and written by an employee of the Downtown Memphis Commission.
21. Plaintiff, and other members of the class as described below, have incurred fines and damages due to the parking tickets issued and written by employee of the Downtown Memphis Commission.
22. The Downtown Memphis Commission employees acted through, though in excess of, the power granted to them by the Downtown Memphis Commission, the City of Memphis, and Shelby County.
23. It is the practice, policy, and/or custom of the Downtown Memphis Commission and its employees for employees to issue and write parking tickets.
24. The City of Memphis has adopted, ratified, and/or defended the practice, policy, and/or custom of the employees of the Downtown Memphis Commission and the Downtown Memphis Commission.
25. The City of Memphis has asserted in court filings that the employees of the

Downtown Memphis Commission and the Downtown Memphis Commission are authorized to issue parking tickets, despite the language of the ordinances. *See City of Memphis's Response to Motion for Summary Judgment*, CT-003469-16, Circuit Court of Tennessee for the Thirtieth Judicial District.

26. Shelby County has adopted and/or ratified the practice, policy, and/or custom of the employees of the Downtown Memphis Commission and the Downtown Memphis Commission.
27. Plaintiff and those similarly situated seek all available damages, including compensatory, punitive, and statutory damages, including out of pocket expenses as outlined herein, attorneys' fees, and expenses in pursuing this litigation, in an amount to be determined by a jury and the Court.
28. Upon information and belief, the Plaintiff states that each of the Defendants has enjoyed significant financial revenues based on the improper issuance of parking ticket by the Downtown Memphis Commission employees.
29. The Defendants have been unjustly enriched.

III. CLASS ACTION ALLEGATIONS

30. The allegations of Paragraphs 1-29 hereinabove are reiterated and incorporated as if fully set forth herein.
31. Plaintiff brings this action as a class against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of a class consisting of:
All persons similarly situated who were issued a parking citation by an employee of the Downtown Memphis Commission.
32. Upon information and belief, the putative class is comprised of more than 1,000

individuals, making joinder impractical. Disposition of this matter as a class action will provide substantial benefit and efficiency to the parties and the Court. Litigating this case as a class action will reduce the possibility of repetitious litigation relating to the Defendants' conduct.

33. Plaintiff is a member of the class and will fairly and adequately assert and protect the interests of the class. The interests of the Plaintiff are consistent with, and not antagonistic to, those of the other members of the class.
34. Plaintiff has retained attorneys who are experienced in class action litigation, and who will provide adequate representation.
35. Upon information and belief, all identities of the members of the class can be ascertained from the records and files of Defendants.
36. Common questions of law or fact as to Defendants' violation of their own municipal ordinances, Section 1983, and other actions that have caused and will continue to cause harm to the class predominate over any question affecting only individual members of the class.
37. The prosecution of separate actions by individual members of the class would create a risk of, among other things, the following:
 - a. Inconsistent or varying adjudications with respect to individual members of the class; and
 - b. Adjudication with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

38. The claims of the lead Plaintiff are typical of the claims of the class, and the class action method is appropriate for the fair and adequate prosecution of this case.
39. Individual litigation of claims which might be commenced by all class members would produce a multiplicity of cases such that the judicial system having jurisdiction of the claims would remain congested for years.
40. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to litigation of all claims arising out of the conduct of Defendants.
41. The certification of a class would allow litigation of claims that, in the view of the expense of litigation, may be insufficient in amount to support separate claims.
42. Accordingly, Plaintiff brings this action on behalf of themselves and on behalf of all other members of the class defined as follows:

All persons similarly situated who received parking tickets issues and written by employees of the Downtown Memphis Commission
43. Excluded from the class is any judge who may preside over this case.
44. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) and (3) due to predominating common questions of law and fact applicable to the class as a whole, and a class action is the superior method by which to adjudicate this controversy.
45. The expense and burden of litigation would substantially impair the ability of Class Members to pursue individual lawsuits in order to vindicate their rights. Absent a class action, the Defendants will retain the benefits of their wrongdoing, despite serious violations of federal and state law.

IV. CAUSES OF ACTION

A. 42 U.S.C. §1983 14th Amendment Claim

46. The allegations of Paragraphs 1-45 hereinabove are reiterated and incorporated as if fully set forth herein.
47. 42 U.S.C. §1983 provides “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]”
48. The Downtown Memphis Commission, its employees, the City of Memphis, and Shelby County, acting under color of law, subjected the Plaintiff and members of the class to deprivation of their rights under the Constitution of the United States to be secure in their property under the 14th Amendment.

B. 42 U.S.C §1983 5th Amendment Claim

49. The allegations of Paragraphs 1-48 hereinabove are reiterated and incorporated as if fully set forth herein.
50. The 5th Amendment to the United States Constitution states “No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
51. The Defendants, acting together, deprived Plaintiff, and members of the class, of their rights under the 5th Amendment to the United States Constitution by taking their property without due process of law or just compensation.

C. Tenn. Const. Section 8 Claim

52. The allegations of Paragraphs 1-51 hereinabove are reiterated and incorporated as if fully set forth herein.
53. Section 8 of the Tennessee Constitution provides “That no man shall be taken or imprisoned, or disseized of his liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”
54. The Defendants, acting together under color of law, deprived the Plaintiff and members of the class of the rights under Section 8 of the Tennessee Constitution.

D. Tenn. Const. Section 21 Claim

55. The allegations of Paragraphs 1-54 hereinabove are reiterated and incorporated as if fully set forth herein.
56. Section 21 of the Tennessee Constitution states “That no man’s particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore.
57. The Defendants, acting together, deprived Plaintiff, and members of the class, of their rights under Section 21 of the Tennessee Constitution by taking their property without due process of law or just compensation.

PRAYER FOR RELIEF

Premises considered, the Plaintiff and members of the class pray:

- A. That the Defendants be required to answer the Complaint filed herein, upon their oath;
- B. That, pursuant to the enumerated counts of the Complaint, that the Plaintiff

and class members recover damages to be determined by the jury, including compensatory damages, actual damages, consequential damages, nominal damages, exemplary damages, pre- and post judgment interest at the highest applicable rates, out of pocket expenses, including but not limited to ticket fees, impound lot fees, lost wages from denied use of property, and all other damages naturally flowing from the improper acts as alleged herein, and other economic and noneconomic harm, cumulative damages, statutory damages, punitive damages, the costs of the action, and reasonable attorneys' fees, in an amount to be determined by a jury, and such other and further relief as the Court deems just and proper;

- C. Plaintiff and class members seek all statutory attorneys' fees, costs, expenses and court costs in prosecuting this action;
- D. Plaintiff and class members demand a jury to try the issues when joined; and
- E. Plaintiff and class members reserve the right to amend this complaint and the facts contained herein as more information becomes available.

WHEREFORE, Plaintiff and the class request judgment in their favor against Defendants, jointly and severally, in an amount to be determined, plus costs, interest, and attorneys' fees, exemplary damages, punitive damages, declaratory and injunctive relief, and any other relief to which Plaintiff and the class is entitled.

Respectfully Submitted,

WELLS, & ASSOCIATES, PLLC

/s/ Murray B. Wells

MURRAY B. WELLS (BPR# 21749)

CAROLINE R. GORDON (BPR# 35155)

Attorney for Plaintiffs

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John P. Pritchard (#10583)

Attorney for Plaintiffs

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Memphis, TN 38103

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NICOLE CICI, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Desoto County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Murray B. Wells and Caroline R. Gordon: Wells & Associates, PLLC, 81 Monroe Ave Ste 200, Memphis TN 38103 John P. Pritchard, 138 N. BB King Street, Memphis TN 38103

DEFENDANTS

SHELBY COUNTY, CITY OF MEMPHIS, and THE DOWNTOWN MEMPHIS COMMISSION

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983

Brief description of cause: Deprivation of property without due process or just compensation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 3/28/19 SIGNATURE OF ATTORNEY OF RECORD s/ Murray B. Wells

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Memphis, Shelby County Employees Not Authorized to Write Parking Tickets](#)
