

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

DONALD ELDRIDGE, on behalf of
himself/herself and all others similarly
situated,

Plaintiff,

vs.

CITY OF ST. JOHN,

Serve:

Mayor Tom Halaska

9221 Central

Saint John, Missouri 63114

Defendant.

Case No. 15SL-CC00456

Div. 2

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION PETITION

COMES NOW Plaintiff Donald Eldridge, on behalf of himself and all others similarly situated, by and through undersigned counsel, and for his Class Action Petition against the City of St. John (“Defendant”) state as follows:

1. Defendant, in violation of Missouri law, charges a variety of illegal fees, designed to profit the municipal corporation at the expense of the general welfare. These fees include a warrant recall fee (“warrant recall fee” or “fee”) and a failure to appear fee (“FTA fee”). These fees (sometimes referred to cumulatively as “fees”) are statutorily prohibited, are void because they were enacted for profit and not to promote the welfare of the public, and violate the Missouri Constitutional rights of Plaintiff and Class.

PARTIES

2. This action is brought by Plaintiff on behalf of himself and a proposed class (“Class”).

3. Plaintiff Donald Eldridge was assessed a warrant recall fee, and a FTA fee in August 2011. These fees have been paid.
4. Plaintiff and Class reside in the State of Missouri and are Missouri citizens.
5. Plaintiff and Class paid these unlawful fees.
6. Defendant City of St. John is a municipal corporation within St. Louis County operating under the laws of the State of Missouri.

JURISDICTION

8. This court has jurisdiction over Defendant because it was formed under the laws of the State of Missouri.
9. Plaintiff and Class are all Missouri citizens and the injury complained of occurred in the City of St. John.

GENERAL ALLEGATIONS

10. Defendant charged two fees that Plaintiff allege were illegal. Those fees are the warrant recall fee and the FTA fee. Each is discussed in a separate section below.

Warrant recall fees

11. Defendant collects warrant recall fees from Plaintiff and Class.
12. The warrant recall fees constitute a court cost in excess of the amount allowed by law.
13. The warrant recall fees must be paid in order to recall a warrant.
14. To contest the warrant recall fee, it must first be paid.

15. Paying the warrant recall fee is necessary in order to appear in court and contest the underlying charges.
16. Plaintiff and Class cannot be heard in court, and were denied all access to court without paying the warrant recall fee first.
17. The warrant recall fee is charged in addition to any fines and other fees, including failure to appear fees, fines related to the underlying charges, and court costs.
18. A warrant recall fee is not authorized by Missouri law. It is illegal. There is not a “count” for a warrant recall fee regarding the original infraction, no affirmative defenses or any way to litigate the warrant recall fee at the time Plaintiff and Class litigated the original infraction. The warrant recall fee is not a tax nor is it related to actual costs incurred; rather it is charged by Defendant as a means of profiting from the issuance of traffic tickets and other violations.
19. The warrant recall fee is not designed to promote health, safety, peace, comfort, or general welfare of the public. It is designed to generate profit.
20. The warrant recall fee is charged and collected by Defendant in its corporate capacity and constitutes a proprietary function.
21. The warrant recall fee creates significant problems for Plaintiff and Class, including causing unnecessary and illegal financial duress.
22. Similarly, assessing the fee is detrimental to the community as a whole, as it increases incarceration rates, reduces faith in the court system, creates distrust by citizens of the court, and results in financial harm to the community.

23. Plaintiff and Class who paid the fee did so under the threat of loss of their procedural rights to be heard, additional fees, and immediate threat of incarceration.
24. Plaintiff and Class who paid the fee did so because of significant duress: a warrant had been issued for their arrest, demonstrating the City's right to immediately arrest any Plaintiff or Class member.
25. Plaintiff and Class paid the "warrant recall fee" under duress. They were not in a position to plead and prove as part of their traffic cases that the warrant recall fee was not related to warrants and that the fee was for the purpose of generating profit for Defendant.
26. Plaintiff and Class paid the "warrant recall fee" under circumstances of oppression, where an unlawful demand was paid to avoid a greater loss, and under circumstances amounting to compulsion.
27. Plaintiff and Class paid the warrant recall fee involuntarily.
28. Plaintiff and Class paid the warrant recall fee without the knowledge that the fee was invented to create profit. Plaintiff and Class lacked actual knowledge of the factual reasons for the fee – including a desire to create profit – as well as information about the fee's misuse.
29. Plaintiff and Class did not have full knowledge of the facts regarding charging and payment of the warrant recall fee, including but not limited to the following facts:
 - a. That it was for the purpose of generating profit for Defendant;
 - b. That the fee had nothing to do with the warrants.

c. The history and actual purpose of the fee.

30. Plaintiff's payment of the "warrant recall fee" was induced by a mistake of fact.

31. Under the circumstances present in this case, it would be inequitable, unjust and improper to permit Defendant to retain the benefit of the warrant recall fee, making the voluntary payment doctrine inapplicable.

32. The circumstances of this case give rise to an independent equitable action, in that the payment of the warrant recall fee was induced and accompanied by inequitable conduct of the Defendant.

33. The facts of this case give rise to an independent equitable action, in that Defendant knew the "warrant recall fee" and the collection procedure for the "warrant recall fee" was illegal.

Failure to Appear Fees

34. Defendant collected at least one failure to appear fee from Plaintiff.

35. A failure to appear charge is unauthorized by law.

36. However, Defendant did not charge Plaintiff or Class with a failure to appear violation that was then litigated.

37. Instead, Defendant charges failure to appear fees (FTA fees) that are assessed without the filing of an information and without proper process.

38. No prosecutor initiates the FTA fees.

39. The result is that Plaintiff and Class were denied the opportunity to meaningfully defend the FTA fees.

40. The Court treats FTA fees as strict liability, denying an opportunity to contest them.
41. Further, the FTA fees are fundamentally illegal because Defendant has no authority to enact any ordinance for the purpose of profiting the municipality at the expense of the general welfare.
42. The FTA fee is not a tax nor is it related to actual costs incurred; rather it is charged by Defendant as a means of profiting from the issuance of traffic tickets and other violations.
43. The FTA fee is not designed to promote health, safety, peace, comfort, or general welfare of the public. It is designed to generate profit.
44. The FTA is charged and collected by Defendant in its corporate capacity and constitutes a proprietary function.
45. Defendant regularly assesses multiple FTA fees against the same individual in an effort to maximize profit.
46. The charging of the FTA fee, along with the other fees described herein, actually makes it less likely that people will appear in court, as the amounts allegedly owed skyrocket and they are unable to pay.
47. The FTA fee, along with the other fees described herein, leads to extreme financial duress, an increased likelihood of incarceration, and in general, harm to the community.
48. The FTA fee erodes confidence in the courts and the rule of law.

49. Plaintiff and Class who paid the FTA fee did so because of significant duress: a warrant had been issued for their arrest, demonstrating the City's right to immediately arrest any Plaintiff or Class member.
50. Plaintiff and class members paid the FTA fee under duress. They were not in a position to plead and prove as part of their traffic cases that the FTA fee was illegal and that the fee was for the purpose of generating profit for Defendant.
51. Plaintiff and Class paid the FTA fee under circumstances of oppression, where an unlawful demand was paid to avoid a greater loss, and under circumstances amounting to compulsion.
52. Plaintiff and Class paid the FTA fee involuntarily.
53. Plaintiff and Class paid the FTA fee without the knowledge that the FTA fee was invented to create profit. Plaintiff and Class lacked actual knowledge of the factual reasons for the FTA fee – including a desire to create profit – as well as information about the FTA fee's misuse.
54. Plaintiff and Class did not have full knowledge of the facts regarding charging and payment of the FTA fee, including but not limited to the following facts:
 - a. That it was for the purpose of generating profit for Defendant;
 - b. That the FTA fee was not properly pursued;
 - c. The history and actual purpose of the FTA fee.
55. Plaintiff's payment of the FTA fee was induced by a mistake of fact.
56. Under the circumstances present in this case, it would be inequitable, unjust and improper to permit Defendant to retain the benefit of the FTA fee, making the voluntary payment doctrine inapplicable.

57. The circumstances of this case give rise to an independent equitable action, in that the payment of the FTA fee was induced and accompanied by inequitable conduct of the Defendant.
58. The facts of this case give rise to an independent equitable action, in that Defendant knew the FTA fee and the collection procedure for the FTA fee was illegal.
59. Disguising the FTA fee as if it were a separate charge was deceptive and unfair.

CLASS ACTION ALLEGATIONS

60. This case is brought and can be properly maintained pursuant to Missouri Rule of Civil Procedure 52.08.
61. There are two types of putative classes. The first set is for those who paid one or more of the illegal fees described in this petition. Those classes are identified as A and B. The second set is for those who owe an outstanding illegal fee. Those classes are C and D.
62. Class A is defined as, “All Missouri Citizens who paid a warrant recall fee to Defendant.”
63. Class B is defined as, “All Missouri Citizens who paid a FTA fee to Defendant.”
64. Class C is defined as, “All Missouri Citizens who are alleged to currently owe a warrant recall fee to Defendant.”
65. Class D is defined as, “All Missouri Citizens who are alleged to currently owe a FTA fee to Defendant.”

66. For simplicity, the classes above are sometimes referred to collectively as “The Class” or “Class.” The allegations about “The Class” are common to all the classes.
67. The Class is believed to comprise thousands of Missouri Citizens, the joinder of whom is impracticable. The members of the Class are so numerous that it is impractical to bring all of them before the Court in this action.
68. Plaintiff brings this action on behalf of himself and the Class against Defendant to recover the amount of the fees paid and to obtain injunctive relief for those class members who have not paid either fee.
69. Excluded from the defined Class is the judge to whom this case is assigned, Defendant, Defendant’s elected officials and representatives, and all those who validly and timely opt out of the certified Class.
70. The amount of damages suffered individually by Plaintiff and Class is so small as to make an individual suit for its recovery economically impracticable and/or unfeasible.
71. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the court system. A well-defined commonality of interest in the question of law and fact involved affects Plaintiff and the proposed Class.
72. There are common questions of law and fact applicable to the claims asserted on behalf of the Class. The common questions include, but are not limited to:
 - a. Whether the warrant recall fee charged by Defendant was in violation of state law;

- b. Whether the FTA fee charged by Defendant was in violation of state law;
 - c. Whether the fees were instituted to create profit for Defendant;
 - d. Whether the fees caused harm to the public welfare;
 - e. Whether the fees eroded confidence in the courts and the rule of law;
 - f. Whether it would be unjust for Defendant to retain the fees;
 - g. Whether Defendant knew the fees were illegal at the time it was charging them;
 - h. The amount collected in warrant recall fees and FTA fees;
 - i. The policies for enforcing the warrant recall fee and FTA fees;
 - j. The purpose of the warrant recall fee and FTA fee;
 - k. Whether an injunction prohibiting future collection and assessment of the fees is appropriate;
 - l. Whether any defenses asserted by Defendant are appropriate;
 - m. Whether punitive damages are appropriate;
 - n. Whether attorneys' fees should be awarded.
73. The claims of Plaintiff are typical of the claims of the Class. Plaintiff asserts no individual claims and his class claims are identical to those of the class. There are no unique defenses.
74. Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interest antagonistic to those of the Class, understand his duties to the class, and is prepared to fulfill them. Plaintiff

has retained competent and experienced counsel in the prosecution of this type of litigation.

75. Defendant has acted or refused to act on grounds that apply generally to the Class as discussed herein, such that final injunctive relief or corresponding declaratory relief is appropriate for the Class.
76. The questions of law and fact common to the members of the Class overwhelmingly predominate over any questions affecting only individual members of the Class.
77. Damages can be calculated from records that the Defendant possesses and do not require individual inquiry.
78. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because members of the Class number in the thousands and individual joinder is impracticable. The expenses and burden of individual litigation would make it impracticable or impossible for proposed members of the Class to prosecute their claims individually. Trial of these claims is manageable.
79. Unless a class is certified, Defendant will retain monies received as a result of its unlawful conduct and scheme to collect monies from Plaintiff and Class. Unless a class-wide injunction is issued, Defendant will continue to violate Missouri law resulting in harm to Missouri citizens.
80. For these reasons, this case is maintainable as a class action pursuant to Missouri Rule of Civil Procedure 52.08.

COUNT I: DECLARATORY JUDGMENT

81. Plaintiff and Class re-allege and incorporate by reference all paragraphs from all other counts of this Petition as if fully set forth herein. This claim is brought for all classes and relates to all fees.
82. An actual and genuine justifiable controversy exists - between Defendant on one hand and Plaintiff and Class on the other - concerning the legality of the warrant recall fee, and FTA fees, the rights of Plaintiff and Class, and the legality of Defendant's conduct. This conduct resulted, or will imminently result, in depriving Plaintiff and Class of their property, rights, and liberties.
83. The fees at issue are prohibited by state law. The practice of charging them conflicts with state law that specifically enumerates the proper fees to be charged by municipal courts.
84. Further, charging a fee in order to profit the municipality in its role as a corporation is illegal.
85. Pursuant to Section 527.010, RSMo and Missouri Rule of Civil Procedure 87, Plaintiff and Class request a declaration of rights concerning:
 - a. Whether the fees are in violation of state law (Section 488.005 et seq.);
 - b. Whether the fees are void because they were enacted without municipal authority to do so, in that they were designed to create profit at the expense of the general welfare;
 - c. Whether Plaintiff and Class are entitled to recover the payments made;and

- d. Whether any person alleged to owe the fees should be relieved of that obligation.

WHEREFORE, Plaintiff and Class pray for the relief requested in the Request for Relief set forth at the end of this Petition.

COUNT II: UNJUST ENRICHMENT AGAINST DEFENDANT

86. Plaintiff and Class re-allege and incorporate by reference all paragraphs from all other parts of this Petition as if fully set forth herein. This Count is brought for classes A and B - the damage classes. The claim relates to all fees.
87. For the reasons set forth in this Petition, the fees were in violation of state law and more specifically Section 488.005 RSMo et seq. and laws prohibiting municipalities from acting in their own interest, and against the interest of their citizens. The warrant recall fee and FTA fee are illegal.
88. Defendant knew or had reason to know that the fees were contrary to state law.
89. As such it is unlawful, inequitable, and unjust for Defendant to collect and retain fees, or otherwise subject Plaintiff and Class to further legal action including arrest and imprisonment.
90. Plaintiff and Class conferred a benefit upon Defendant by making payments pursuant to these unlawful fees.
91. Defendant has accepted and retained monies paid by Plaintiff and Class pursuant to these unlawful fees.
92. Defendant has acknowledged receipt of the unjust benefit conferred by Plaintiff and Class.

93. Because the fees were unlawful, it would be unjust for Defendant to retain any benefit in the form of fees paid by Plaintiff and Class or to obtain further monies from Plaintiff and Class.
94. Defendant possesses monies which rightfully belong to Plaintiff and Class because these monies were collected by means of unlawful fees, which in good conscience ought to be paid back to Plaintiff and Class.
95. Therefore, it is unjust, inequitable, and/or unconscionable for Defendant to retain monies paid by Plaintiff and Class.
96. As a result of Defendant's conduct, Defendant has been unjustly enriched at the expense of Plaintiff and Class in excess of \$25,000.
97. Plaintiff and Class claim all legal and equitable remedies, including restitution, which they are entitled by law to recover from Defendant for the injuries and losses set forth herein.

WHEREFORE, Plaintiff and Class pray for the relief requested in the Request for Relief set forth at the end of this Petition.

COUNT III: MONEY HAD AND RECEIVED

98. Plaintiff and Class re-allege and incorporate by reference all paragraphs from all other parts of this Petition as if fully set forth herein. This Count is brought for the classes A and B – the damage classes. The allegations herein relate to all fees.
99. Defendant had received monies which in equity and good conscience ought to be paid to Plaintiff and the Class.

100. The conduct of Defendant was malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against Defendant.

WHEREFORE, Plaintiff and Class pray for the relief requested in the Request for Relief set forth at the end of this Petition.

COUNT IV: ACTION FOR AN ACCOUNTING AND REIMBURSEMENT

OF COURT FEES PAID

101. Plaintiff and Class re-allege and incorporate by reference all paragraphs from all other parts of this Petition as if fully set forth herein. This Count is brought for Classes A and B – the damage classes. All allegations herein relate to these fees.

102. Plaintiff and Class paid the warrant recall fees and FTA fees and are entitled to a refund of those fees because that money was taken from Plaintiff through practices that are illegal and conflict with state law.

103. Plaintiff and Class bring this equitable action for an accounting and reimbursement of fines and court costs paid during the period when the unlawful and void fees were collected.

104. Plaintiff and Class seek the creation of a common fund out of which this Court can reimburse Plaintiff and Class.

WHEREFORE, Plaintiff and Class pray for the relief requested in the Request for Relief set forth at the end of this Petition.

COUNT V: NEGLIGENCE

105. Plaintiff and Class re-allege and incorporate by reference all paragraphs from all other parts of this Petition as if fully set forth herein. This Count is brought on behalf of Classes A and B – the damages classes.
106. Defendant had a duty to collect only the municipal fees authorized by law.
107. Defendant had a duty not to collect fees for profit.
108. Defendant breached its duty by collecting the warrant recall fee and FTA fee.
109. Defendant knew or should have known through the exercise of reasonable care that collection of the fees was illegal and that it would cause harm to Plaintiff and Class.
110. Defendant's collection of the warrant recall fee directly caused or contributed to cause harm to Plaintiff and Class, including by causing Plaintiff and Class to pay money they did not owe.
111. Defendant's collection of the fees was carried out recklessly and with a total disregard for the harm that it would cause Plaintiff and Class.
112. Plaintiff and Class suffered damage, including payment of the fees, as a result of Defendant's negligence.

WHEREFORE, Plaintiff and Class pray for the relief requested in the Request for Relief set forth at the end of this Petition.

COUNT VI: MERCHANDISING PRACTICES ACT

113. Plaintiff and Class re-allege and incorporate by reference all paragraphs preceding Count I in this petition. This count is brought for Classes A and B – the damage classes. The allegations relate to all fees.
114. Section 407.025 applies to suits against “corporations,” and Defendant is a municipal corporation incorporated under Missouri law.
115. Defendant is a corporate citizen who can, and in this case did, act in its corporate capacity.
116. The collection of the warrant recall fee and FTA fee was solely in order to produce profit for the corporation.
117. To this end, Defendant billed and charged Plaintiff and Class for the fees.
118. Plaintiff and Class were required to pay the charges in exchange for an alleged service such as the recall of a warrant, or the right to appear in court.
119. Defendant issued a receipt for payment for the service.
120. Charging a price for a specific service constitutes a sale.
121. These services constitutes merchandise pursuant to Chapter 407.
122. The payment of the warrant recall fee and FTA fee by Plaintiff and Class members and the charging of the fee by Defendant was for personal, family, and household purposes.
123. The manner in which Defendant charged the fees was misleading and constituted deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material fact in at least the following ways:

- a. The fees are prohibited by state law because it is not one of the municipal fees authorized under 488.005 RSMo et seq;
 - b. The fees are charged, not because of any actual cost or justification, but instead in order to produce profit for Defendant;
 - c. The fees are onerous, as it is charged in addition to every other fee, fine, and cost that is assessed;
 - d. The fees are misleading, as it suggests that it is related to warrants, when in reality, it is driven purely by a desire to produce additional profit;
 - e. Defendant does not disclose that the fees generate far more revenue than is needed to operate the municipal court;
 - f. The fees are collected under duress, by design.
124. As a direct and proximate result of the charging of the fees, Plaintiff and Class suffered ascertainable loss, including but not limited to the amount paid for the fees.
125. Defendant's actions were made knowingly, intentionally, and with evil intent.

WHEREFORE, Plaintiff and Class pray for the relief requested in the Request for Relief set forth at the end of this Petition

REQUEST FOR RELIEF

WHEREFORE, Plaintiff and Class pray for the following relief:

- A. An order declaring the actions of the Defendant to be illegal and in violation of Missouri law;
- B. Preliminarily and permanently enjoining Defendant, its agents, all those under their control, and their successors in office from collecting fees in

- accordance with the unlawful fees or from taking any legal action against persons for failure to pay;
- C. Certifying the classes for purposes of this litigation;
 - D. Appointing Campbell Law LLC, the Saint Louis University Law Clinic, and Arch City Defenders as lead counsel;
 - E. Awarding compensatory damages for the Plaintiff and Class in an amount that is fair just, and reasonable under the circumstances;
 - F. Ordering disgorgement of the warrant recall fee and FTA fee;
 - G. Ordering injunctive relief commanding Defendant not to collect and declare void any outstanding fees which were to be collected;
 - H. Awarding Plaintiff the costs of this action;
 - I. Awarding punitive damages;
 - J. Awarding attorneys' fees; and
 - K. Any such other and further relief as the Court deems fair and just.

JURY TRIAL REQUESTED

Plaintiff hereby respectfully requests a trial by jury.

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CERTIFICATE OF SERVICE

The foregoing document was electronically filed on March 25, 2015 via the Missouri efilings system and all attorneys of record were provided a copy via the efilings system.

/s/ John Campbell