

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NUMBER: _____

DIVISION: “____”

MONICA MILLS AND CRYSTAL CROUSE,
individually and on behalf of all
others similarly situated

VERSUS

JON A. GEGENHEIMER, in his official capacity as
CLERK OF COURT FOR THE PARISH OF JEFFERSON

FILED: _____

DEPUTY CLERK

**CLASS ACTION PETITION FOR DECLARATORY JUDGMENT,
REFUND OF UNLAWFULLY EXACTED COURT COSTS,
AND INJUNCTIVE RELIEF**

NOW INTO COURT, through undersigned counsel, come MONICA MILLS and CRYSTAL CROUSE, appearing individually and as representatives of a class of persons similarly situated, who respectfully represent:

I. NATURE OF THE ACTION

1. La. R.S. 13:1000.12 permits the Twenty-Fourth Judicial District Court to assess “a one-time fee not to exceed fifty dollars in all domestic filings,” the proceeds of which are deposited into the Court’s Domestic Commissioner’s Fund and used solely to defray the costs of the Domestic Early Intervention Triage Program. Exercising that authority, the judges of this Court fixed the fee at fifteen dollars (\$15.00), well within the statutory ceiling.

2. The Legislature authorized one fee. Defendant collects many. He does so under an order of this Court that omits the word “one-time.” In domestic cases pending in this district, the fee is assessed not once but repeatedly: on the petition, on each rule to show cause, on each motion, and on each incidental demand, so that a single domestic case may be charged the fee five, ten, or more times over its life.

3. The words “one-time” in La. R.S. 13:1000.12(A) cannot be read out of the statute. Under Defendant’s practice they do no work at all: every assessment on a discrete pleading is already a single assessment, so “one-time” would add nothing to the sentence. Louisiana law does not permit a construction that renders statutory language meaningless.

4. Plaintiffs bring this action under La. C.C.P. arts. 591 et seq. and 1871 et seq. and La. C.C. arts. 2298 through 2305, seeking (a) a declaration that La. R.S. 13:1000.12 authorizes no

more than one fee per domestic case; (b) restitution of every fee collected in excess of that limit; and (c) an injunction against continued collection.

II. PARTIES

5. Plaintiff, MONICA MILLS, is a person of the full age of majority domiciled in the Parish of Jefferson, State of Louisiana. She is a party to domestic proceedings bearing No. 841-037 on the docket of this Court, in which she was assessed and paid the fee described herein on thirteen separate occasions. The opposing party in that same case was assessed and paid the fee on two further occasions, so that one domestic case produced fifteen separate exactions of a charge the Legislature authorized to be made once.

6. Plaintiff, CRYSTAL CROUSE, is a person of the full age of majority domiciled in the Parish of Jefferson, State of Louisiana. She was a party to domestic proceedings bearing No. 879-226 on the docket of this Court, in which she was assessed and paid the fee described herein on seven separate occasions.

7. Made defendant herein is JON A. GEGENHEIMER, in his official capacity as Clerk of Court for the Parish of Jefferson, a person of the full age of majority domiciled in the Parish of Jefferson and a separate constitutional officer under La. Const. art. V, § 28. The Clerk assesses, demands, receives, records, and accounts for the fee at issue as a condition of accepting domestic pleadings for filing, and thereafter remits the proceeds to the Domestic Commissioner's Fund.

8. The Clerk is the only defendant. No claim is asserted against, and no relief is sought from, the Twenty-Fourth Judicial District Court, any judge of that Court, any domestic commissioner or hearing officer, or the Judicial Administrator. Plaintiffs do not challenge any adjudication, any exercise of judicial authority in any case, or the administration of the Domestic Early Intervention Triage Program. The order described below under which the fee is collected is an administrative act fixing a court cost, and the question presented is whether the Clerk may collect under it beyond what the statute allows.

9. The Clerk's authority to demand and collect court costs is ministerial and is limited to the sums expressly fixed by law. See La. R.S. 13:841(A) (a clerk's fees of office "may be less than, but shall not exceed, the amounts set forth" by statute). The Clerk may not collect a cost the Legislature has not authorized, and no administrative order can enlarge that authority beyond what the statute permits. The sole conduct complained of here is the Clerk's collection of a court cost in excess of the amount and frequency the Legislature authorized.

10. Under La. C.C. art. 2299, restoration is owed by the person who received the payment, and the Clerk received every payment at issue. Should the Court nonetheless determine that any other person or entity holding sums sought to be restored is needed for a just adjudication under La. C.C.P. art. 641 et seq. or La. C.C.P. art. 1880, Plaintiffs stand ready to amend to join that party, and reserve the right to do so.

III. JURISDICTION AND VENUE

11. This Court has original jurisdiction over this civil matter under La. Const. art. V, § 16(A). Declaratory relief is available under La. C.C.P. arts. 1871 through 1883.

12. Venue is proper in the Parish of Jefferson under La. C.C.P. art. 42 and La. R.S. 13:5104(B), because Defendant is domiciled in and performs his official functions in this Parish and because the conduct complained of occurred here.

13. Plaintiffs seek no relief against this Court or its judges. Plaintiffs nonetheless acknowledge that the order under which the fee is collected was approved by the judges of this Court sitting en banc, that the order directs the Clerk to forward the proceeds to the Court monthly, and that those proceeds support a program of this Court, and Plaintiffs reserve all rights under La. C.C.P. arts. 151 et seq.

IV. FACTUAL ALLEGATIONS

A. The statute

14. By Acts 2015, No. 91 (H.B. 104), effective August 1, 2015, the Legislature enacted La. R.S. 13:1000.12, entitled “Twenty-Fourth Judicial District Court; additional support obligation fee; Domestic Commissioner’s Fund.”

15. Subsection (A) provides in full: “The Twenty-Fourth Judicial District Court may assess a one-time fee not to exceed fifty dollars in all domestic filings. The collected fees shall be deposited into the Twenty-Fourth Judicial District Court’s Domestic Commissioner’s Fund and used solely to defray the costs associated with the Domestic Early Intervention Triage Program. The amount of the fee imposed or any increase in the fee shall be approved by the judges sitting en banc and shall be in addition to all other fines or costs lawfully imposed.”

16. Subsection (B) provides: “The provisions of this Section shall not apply in cases in which the Department of Children and Family Services is providing support enforcement services.”

B. The legislative history confirms a single charge per case

17. The fee did not originate with the statute. In 1986, the Legislature established an expedited process for the establishment of paternity and the establishment and enforcement of support obligations. See La. R.S. 46:236.5. That process was funded by a fee of not more than five percent of support obligations collected, a charge that recurred with each collection. La. R.S. 46:236.5(B)(1). In 1987, the judges of this Court, by rule adopted en banc, provided for the additional collection of a thirty-five dollar filing fee. That rule remains among this Court's published local rules and provides: "Pursuant to La. R.S. 46:236.5 (B), the court hereby assesses a fee of thirty-five dollars (\$35.00) on every petition, motion or rule filed wherein support or enforcement of support is demanded after October 31, 1987 in order to fund the administrative cost of the expedited process." Rules for Louisiana District Courts, Title IV, Rule 25.1, Appendix 25.1 (Twenty-Fourth Judicial District Court), ¶ B. The statute the rule invokes authorizes a percentage fee on support collected and nothing else; it authorizes no flat filing fee. The thirty-five dollar charge therefore rested on the en banc rule alone for the next twenty-eight years. By the rule's own terms it was assessed only in proceedings in which support or its enforcement was demanded, not on other domestic filings, and it was assessed "on every petition, motion or rule" so filed.

18. On January 6, 2015, the Court applied to the Judicial Council of the Supreme Court of Louisiana, File No. 2015-03, as La. R.S. 13:62(B) requires before any law providing for a new court cost may be enacted. The application identified the proposed charge as a new fee, identified La. R.S. 46:236.5 as the provision to be amended, and requested "permission to impose a Domestic Filing Fee of up to \$100, to be decided by the Judges, En Banc, on all Domestic filings," to offset the salaries and benefits of the commissioners and hearing officers of the Domestic Early Intervention Triage Program.

19. The report of the Judicial Council's Court Cost Committee summarized the request: the Court "would like the legislative authority to impose the \$35 fee it currently collects and to raise the amount of the fee to no more than \$100 with en banc approval of the court." The Judicial Council found that the proposed fee appeared to meet its guidelines and so advised the Legislature. What the Court sought was statutory authority for the thirty-five dollar charge it was already collecting, with room to raise it to one hundred dollars.

20. As introduced, H.B. 104 would have authorized the Court to “assess a one-time fee not to exceed one hundred dollars against the obligor, in all actions to establish or enforce a support obligation, pursuant to the child support enforcement provisions provided for in Subpart B of Part II of Chapter 3 of Title 46 of the Louisiana Revised Statutes of 1950.” That formulation is a single charge per action, imposed on one person, in one category of cases. That formulation tracked the fee as it had been collected since 1987: a charge tied to support proceedings, not to domestic filings generally. The phrase “one-time” appears nowhere in the Court’s application to the Judicial Council; the Legislature supplied it.

21. The House Committee on Judiciary amended the bill in three respects, and three respects only: it reduced the maximum fee from one hundred dollars to fifty dollars; it broadened the application of the fee from support establishment and enforcement actions to all domestic filings in the Court; and it exempted cases in which the Department of Children and Family Services provides support enforcement services. Fifty dollars is half of what the Court had requested.

22. The committee thereby enlarged the universe of cases the fee reaches and severed the fee from the Title 46 support-collection scheme, the one setting in which charges recur with each payment collected. What the committee did not touch is the phrase “one-time,” which appears in every version of the bill from introduction through enrollment. Having removed the recurring-collection context, the Legislature left “one-time” a single function to perform: limiting the number of times the fee may be exacted in a case.

23. The contemporaneous fiscal analysis reflects the same understanding. The fiscal note prepared by the Office of Legislative Auditor on the engrossed version of H.B. 104, dated May 2, 2015, scored the measure’s greatest possible effect on local revenues at \$45,200 per year, \$226,000 over five years. An official of this Court reported to the analyst an average of 904 filings per year in actions to establish or enforce a support obligation, and the analyst reached the ceiling by multiplying by a single fee: “904 cases X \$50 maximum fee that could be charged.”

24. The official fiscal estimate thus converted “filings” into “cases” and priced the measure on the premise of a single fee per case. Nothing in the fiscal note contemplates collection on every pleading. On information and belief, Defendant’s annual collections under La. R.S. 13:1000.12 have far exceeded what a fifteen-dollar fee assessed once per domestic case could produce, because the fee is exacted on every domestic pleading rather than once per case.

25. The history and the enacted text point the same way. The Court asked leave to charge thirty-five dollars, with authority to go as high as one hundred; the Legislature answered with “a one-time fee not to exceed fifty dollars.” The fee the Court asked to codify was, by the terms of the Court’s own 1987 rule, assessed “on every petition, motion or rule.” The Legislature did not adopt that formulation. It wrote “one-time” instead, and the substitution of “one-time” for “every petition, motion or rule” is the plainest available evidence of what the Legislature meant by the phrase. Under Defendant’s practice, case No. 841-037 alone yielded \$225.00 in fees. On Defendant’s construction, neither “one-time” nor the fifty-dollar ceiling restrains what a single domestic case may be made to pay, and both of the limitations the Legislature imposed on the Court’s request are read out of the statute.

C. The en banc order and the Clerk’s collection practice

26. On information and belief, the fee was first fixed by an order dated January 7, 2016, signed by the Honorable Cornelius E. Regan as Chief Judge. By order dated November 15, 2016, approved by the judges of this Court sitting en banc on September 28, 2016 (the “Order”), the Court amended and superseded the January 7, 2016 order to the extent of any conflict. The Order directs that “[a] filing fee of Fifteen (\$15.00) Dollars shall be assessed on all domestic filings except those identified by the following codes and titles in the Clerk of Court’s system,” lists ten clerical docket entries (among them the filing of an exhibit, a letter, a change of address, and a civil case cover sheet), and provides that the fee “is to be collected by the Jefferson Parish Clerk of Court and forwarded to the Court monthly.” The Order recites that it issues “in accordance with Louisiana Constitution Article V, Section 1 and the inherent powers of this Court” and “in accordance with LSA R.S. 13:1000.12.” A copy of the Order is reproduced herein.

24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

ORDER

Acting in accordance with Louisiana Constitution Article V, Section 1 and the inherent powers of this Court:

IT IS HEREBY ORDERED THAT:

A filing fee of Fifteen (\$15.00) Dollars shall be assessed on all domestic filings except those identified by the following codes and titles in the Clerk of Court's system:

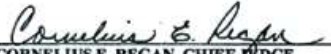
512	File exhibit
531	File -- change of address
517	Recall attachment
753	Appeal decision
533	File -- non paper exhibit/object
635	File letters
640	Civil case cover sheet -- LA. R.S. 1
636	File certificate of no opposition
705	Judicial sale certificate request form
673	Sheriff lien prep

This order shall be effective as soon as the Clerk of Court can implement this change as approved by the Judges of the Twenty-Fourth Judicial District Court sitting en banc on September 28, 2016, and acting in accordance with LSA R.S. 13:1000.12. The fee is to be collected by the Jefferson Parish Clerk of Court and forwarded to the Court monthly.

IT IS FURTHER ORDERED that the order of January 7, 2016, signed by the Honorable Cornelius E. Regan acting as Chief Judge for the Twenty-Fourth Judicial District Court is amended and superseded to the extent that it conflicts with this order.

Gretna, Louisiana, this 15th day of November, 2016.

For the Twenty-Fourth Judicial District Court


CORNELIUS E. REGAN, CHIEF JUDGE

27. The Order omits the word "one-time." Where La. R.S. 13:1000.12(A) authorizes "a one-time fee not to exceed fifty dollars in all domestic filings," the Order directs "[a] filing fee of Fifteen (\$15.00) Dollars . . . on all domestic filings." Apart from the amount and the ten clerical exceptions, the two texts differ in one respect: the Order deletes the limitation the Legislature placed on frequency. The statute delegates to the judges en banc the amount of the fee, and only the amount; it delegates nothing about frequency. To the extent the Order directs that the fee be assessed more than once in a single domestic case, it exceeds the authority delegated by La. R.S. 13:1000.12(A) and is without effect, and it cannot enlarge the Clerk's collection authority, which is fixed by the Legislature alone.

28. Pursuant to the Order, and notwithstanding the statute, Defendant assesses and collects the fee upon every filing in a domestic case other than the ten excepted clerical entries, including but not limited to petitions, answers, exceptions, rules to show cause, motions, memoranda, incidental demands, and post-judgment filings, whether filed by the petitioner, the respondent, or a third party.

29. As a result, litigants in a single domestic case routinely pay the fee many times. Plaintiff Mills paid it thirteen times in case No. 841-037, fifteen dollars on each occasion, a total of \$195.00, of which all but the first fifteen dollars (\$15.00), that is, \$180.00, was collected without statutory authority. The opposing party in her case paid the fee twice more: one case, fifteen exactions, \$225.00 collected under a statute that authorized \$15.00. Plaintiff Crouse paid the fee seven times in case No. 879-226, fifteen dollars on each occasion, a total of \$105.00, of which all but the first fifteen dollars, that is, \$90.00, was collected without statutory authority.

30. On information and belief, Defendant's records identify, for every domestic case filed in this Court since August 1, 2015, each occasion on which the fee was assessed, the amount assessed, the person from whom it was collected, and the disposition of the funds. Class membership and the amount owed to each class member are therefore ascertainable from Defendant's own data.

31. The Clerk is charged with knowledge of the statutes that fix and limit his authority to collect costs. On information and belief, Defendant has at all times known the text of La. R.S. 13:1000.12, including the words "one-time," and has nonetheless collected the fee repeatedly in the same cases. Defendant's receipt of the excess payments was accordingly in bad faith within the meaning of La. C.C. art. 2303, and in any event became so no later than judicial demand. The Order does not alter that conclusion: an order that omits a limitation the statute imposes cannot confer authority the statute withholds.

32. The sums collected in excess of statutory authority were paid by domestic litigants, many of them unrepresented, many of them of modest means, and all of them paying under the practical compulsion that their pleadings would be refused for filing if they did not pay. See La. R.S. 13:842.

V. LA. R.S. 13:1000.12 AUTHORIZES ONE FEE PER CASE

33. The starting point is the text. La. C.C. art. 9 and La. R.S. 1:4 require that a clear and unambiguous law be applied as written. La. C.C. art. 11 requires that the words of a law be given their generally prevailing meaning. Were any ambiguity to remain, La. C.C. art. 12 directs that the words be read in their context and in light of the text of the law as a whole, La. C.C. art. 13 directs that laws on the same subject matter be interpreted in reference to each other, and the settled canon against surplusage requires that every word be given effect and that no clause be treated as meaningless.

34. The natural work of the phrase “one-time” is to limit the number of times the fee may be charged in a case. Under Defendant’s construction the phrase is inert: a fee imposed on a pleading is inherently imposed once on that pleading, so “one-time” would be pure redundancy. Where one reasonable reading gives statutory language work to do and the competing reading strips it of any function, the former must prevail.

35. The phrase “in all domestic filings” identifies the class of matters in which the fee may be assessed. It answers “which cases,” not “how many times.” The limitation on frequency is supplied by “one-time” and by nothing else in the Section. The Legislature’s own fiscal estimate read the provision the same way, treating filings and cases as one and the same and multiplying by a single fee.

36. The Legislature’s vocabulary elsewhere confirms the reading. When the Legislature intends a charge on every filed document, it says so: La. R.S. 13:841(A)(2) fixes the clerk’s fee for filing a document by the page, and La. R.S. 13:1213(3) imposes a charge “[f]or filing any answer, supplemental petition, intervention, exception, motion, rule, or other proceeding or document,” expressly “for each.” When the Legislature intends a charge collected once, it says that too: La. R.S. 13:86 confines its additional sum to “the initial filing in all civil matters,” and La. R.S. 13:1213.1 authorizes a single fee collected upon the initial pleading, after which “no further or additional fees shall be demanded.” In La. R.S. 13:1000.12 the Legislature wrote neither “each” nor “initial”; it wrote “one-time,” which does in this Section the work “initial” does in those: it limits the fee to one collection in a case. The Legislature has used the same phrase, with that meaning made explicit, in the very support-enforcement scheme from which H.B. 104 originated: La. R.S. 46:236.5(B)(2) authorizes a court to “assess a one-time fee in each case payable by the obligor not to exceed twenty-five dollars.” There the Legislature paired “one-time fee” with “in each case,” and that provision was on the books when Act 91 of 2015 was enacted. A one-time fee is a fee collected one time in a case.

37. Court costs are a creature of statute and may be imposed only to the extent expressly authorized by law, and statutes authorizing them are strictly construed against the party seeking to collect. Any ambiguity in La. R.S. 13:1000.12 must therefore be resolved against Defendant.

38. The Order’s recital that it issues under Louisiana Constitution Article V, Section 1 and “the inherent powers of this Court” does not enlarge the statutory delegation. The judicial power vested by Article V, Section 1 is the power to adjudicate, and the inherent power of a court is “all

of the power necessary for the exercise of its jurisdiction even though not granted expressly by law.” La. C.C.P. art. 191. The collection of a charge from litigants to raise revenue for the operation of a court is not an exercise of jurisdiction, and a court cost that lacks statutory authorization cannot be sustained as an exercise of inherent power. Nor can the Order be sustained as a rule of court. The judges sitting en banc may adopt rules for the conduct of judicial business only insofar as those rules are “not contrary to the rules provided by law,” La. C.C.P. art. 193(A), and an order that omits a limitation the statute imposes is contrary to the rule provided by law. The Court acknowledged as much in 2015, when it applied to the Judicial Council under La. R.S. 13:62 for statutory authority to collect a fee, and La. R.S. 13:62(B) forbids the enactment of any new court cost without that review. Having obtained a statute, the Court is bound by its terms.

39. Because the fee is authorized only once per domestic case, every fee collected beyond the first in any given case was collected without legal cause and is owed back.

VI. CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action individually and, pursuant to La. C.C.P. arts. 591 et seq., on behalf of the following class:

All persons who, on or after August 1, 2015, the effective date of La. R.S. 13:1000.12, paid to the Clerk of Court for the Parish of Jefferson more than one fee assessed under La. R.S. 13:1000.12 in a single domestic case pending in the Twenty-Fourth Judicial District Court.

41. Excluded from the class are Defendant, the judges and employees of the Twenty-Fourth Judicial District Court and of the Office of the Clerk of Court for the Parish of Jefferson, and their immediate families.

A. Numerosity (La. C.C.P. art. 591(A)(1))

42. On information and belief, thousands of domestic cases are filed in the Twenty-Fourth Judicial District Court each year, and the class numbers in the tens of thousands. Joinder of all members is impracticable.

B. Commonality (La. C.C.P. art. 591(A)(2))

43. This case turns on one question common to every class member: whether La. R.S. 13:1000.12 authorizes more than one fee in a single domestic case. That question is answered identically for every member of the class, and its answer resolves liability in a single stroke.

44. Additional common questions include whether the Order, to the extent it directs assessment of the fee on every domestic filing, exceeds the authority delegated by La. R.S. 13:1000.12; whether Defendant's receipt was in bad faith under La. C.C. art. 2303; whether Defendant is bound to restore the sums collected under La. C.C. arts. 2299 et seq.; and the appropriate measure of restitution and interest.

C. Typicality (La. C.C.P. art. 591(A)(3))

45. Plaintiffs' claims arise from the same practice, are based on the same legal theory, and seek the same relief as the claims of the class. Each Plaintiff was charged the fee repeatedly in a single case, exactly as the class was.

D. Adequacy (La. C.C.P. art. 591(A)(4))

46. Plaintiffs have no interests antagonistic to the class and have retained counsel experienced in class litigation and in domestic practice before this Court. Plaintiffs will fairly and adequately protect the interests of the class.

E. Objectively definable class (La. C.C.P. art. 591(A)(5))

47. The class is defined by objective criteria drawn entirely from Defendant's records: the identity of the payor, the case number, and the number and amount of the fees assessed in that case. No individualized inquiry into any class member's state of mind or circumstances is required.

F. Predominance and superiority (La. C.C.P. art. 591(B)(3))

48. The common legal question predominates over any individual issue. Damages are purely arithmetic: the number of fees paid in a case, less one, multiplied by the fifteen-dollar fee (or such other amount as was actually assessed).

49. A class action is superior to any other method. At fifteen dollars per exaction, an individual claim typically amounts to no more than a few hundred dollars, far below the cost of pursuing it. Absent certification, the overwhelming majority of class members will recover nothing and Defendant will retain sums the Legislature never authorized him to collect. Concentrating the litigation in one forum also avoids inconsistent constructions of the same statute in thousands of separate domestic cases.

50. Plaintiffs are unaware of any other pending litigation raising these claims. Management of this class presents no unusual difficulty, as membership and damages can be computed from Defendant's electronic records.

VII. CAUSES OF ACTION

COUNT ONE: Declaratory Judgment (La. C.C.P. arts. 1871 through 1883)

51. Plaintiffs reiterate and re-allege each preceding paragraph.

52. An actual and justiciable controversy exists between Plaintiffs and the class on one hand and Defendant on the other concerning the meaning of La. R.S. 13:1000.12 and the lawfulness of Defendant's collection practice under the Order.

53. Plaintiffs are entitled to a judgment declaring that La. R.S. 13:1000.12(A) authorizes the assessment of no more than one fee per domestic case, in the amount fixed by the judges sitting en banc not to exceed fifty dollars, and that every fee assessed beyond the first in a given domestic case is unauthorized and void, and that neither the Order nor any other order of this Court authorizes Defendant to assess or collect the fee more than once in a single domestic case.

COUNT TWO: Payment of a Thing Not Owed (La. C.C. arts. 2299 through 2305)

54. Plaintiffs reiterate and re-allege each preceding paragraph.

55. Under La. C.C. art. 2299, a person who receives a payment not owed to him is bound to restore it. Under La. C.C. art. 2300, a thing is not owed when it is paid for the discharge of an obligation that does not exist.

56. Plaintiffs and the class owed no obligation to pay any fee under La. R.S. 13:1000.12 beyond the first assessed in their respective cases. Error is not an element of restitution under La. C.C. art. 2299; in any event, the payments were made in the erroneous belief that they were due, and under the practical compulsion that pleadings would not be accepted for filing without them.

57. Defendant received those payments and is bound to restore them. Because Defendant's receipt was in bad faith within the meaning of La. C.C. art. 2303, restoration is owed with fruits and products and with legal interest from the date of each payment; alternatively, legal interest is owed from the date of judicial demand.

58. That Defendant may have remitted some or all of the sums received to another account or fund does not extinguish the obligation to restore what was received from Plaintiffs and the class without legal cause. See La. C.C. arts. 2299, 2305.

COUNT THREE: Enrichment Without Cause (La. C.C. art. 2298), Pleaded in the Alternative

59. Plaintiffs reiterate and re-allege each preceding paragraph, and plead this Count strictly in the alternative and only in the event no other remedy at law is available.

60. Defendant has been enriched by the receipt of sums collected without statutory authority; Plaintiffs and the class have been correspondingly impoverished; there is no legal cause for the enrichment; and, in the circumstance posited by this Court, no other remedy at law is available. Plaintiffs and the class are entitled to restitution to the extent of the enrichment.

COUNT FOUR: Injunctive Relief

61. Plaintiffs reiterate and re-allege each preceding paragraph.

62. Defendant continues to assess and collect the fee on every domestic filing pursuant to the Order, from members of the class and from litigants not yet before this Court.

63. Because the conduct sought to be enjoined is the collection of a court cost without statutory authority, and is therefore unlawful, no showing of irreparable injury is required for injunctive relief. *Zeringue v. St. James Parish Sch. Bd.*, 13-444 (La. App. 5 Cir. 11/19/13), 130 So. 3d 356, 359; *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/99), 749 So. 2d 597, 599. In the alternative, the continuing exaction of sums too small to justify individual suit is an irreparable injury for which there is no adequate remedy at law. Plaintiffs are entitled to a preliminary and permanent injunction prohibiting Defendant from assessing or collecting more than one fee under La. R.S. 13:1000.12 in any domestic case.

COUNT FIVE: Alternative Constitutional Claim

64. Plaintiffs reiterate and re-allege each preceding paragraph, and plead this Count only in the alternative and only in the event the Court construes La. R.S. 13:1000.12 to authorize assessment of the fee on every pleading filed in a domestic case.

65. So construed, the exaction would operate as an unlimited and open-ended charge on the exercise of the right of access to the courts guaranteed by La. Const. art. I, § 22, would deprive litigants of property without due process of law in violation of La. Const. art. I, § 2, and would exceed the scope of any fee reasonably related to the service rendered. A charge exacted anew on every affidavit, memorandum, exception, order and rule filed in a case bears no reasonable relationship to the service rendered.

66. Pursuant to La. C.C.P. art. 1880, the Attorney General of the State of Louisiana is being served with a copy of this Petition contemporaneously with its filing and is entitled to be heard on this alternative constitutional claim.

VIII. PRESCRIPTION

67. The claims asserted under La. C.C. arts. 2298 and 2299 arise quasi-contractually from the receipt of payments not owed. They are personal actions subject to the ten-year liberative prescription of La. C.C. art. 3499, which reaches every payment made within the ten years preceding the filing of this Petition. They do not arise from delictual fault, and no delictual prescriptive period applies to them.

68. For any payment made more than ten years before the filing of this Petition, and in the alternative to the extent any shorter prescriptive period is found to apply, prescription was suspended under the doctrine of *contra non valentem*. Class members had no reasonable means of knowing that the repeated fees exceeded statutory authority: the charge appeared on the Clerk's cost statements as a routine item of court costs, indistinguishable from lawfully imposed costs.

69. Under La. C.C.P. art. 596, the filing of this class action petition suspends liberative prescription as to all members of the class as defined herein.

PRAYER

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray that:

1. This Petition be deemed good and sufficient and that Defendant be duly served and cited to appear and answer;

2. This action be certified as a class action under La. C.C.P. arts. 591 et seq., that Plaintiffs be appointed class representatives, and that undersigned counsel be appointed class counsel;

3. The Court declare that La. R.S. 13:1000.12 authorizes no more than one fee per domestic case, in the amount fixed by the judges sitting en banc not to exceed fifty dollars, and that neither the Order of November 15, 2016 nor any other order of this Court authorizes Defendant to assess or collect the fee more than once in a single domestic case;

4. Defendant be ordered to restore to Plaintiffs and the class all sums collected in excess of that authority, with fruits and with legal interest from the date of each payment pursuant to La. C.C. art. 2303, or alternatively with legal interest from the date of judicial demand;

5. Defendant be preliminarily and permanently enjoined from assessing or collecting the fee in excess of statutory authority;

6. Defendant be ordered to produce an accounting of all sums assessed, collected, and remitted under La. R.S. 13:1000.12;

7. Plaintiffs be awarded all costs of these proceedings, expert fees, incentive awards as class representatives, and an award of attorney's fees payable from the common fund; and

8. Plaintiffs be granted all such other and further relief, general and equitable, as the nature of the case may permit and the interests of justice may require.

STATEMENT PURSUANT TO LA. DIST. CT. R. 9.8(a)

This matter is not set for trial. Plaintiffs intend to submit the application for preliminary injunction set forth in Count Four on the pleadings and the supporting affidavits of Monica Mills and Crystal Crouse pursuant to La. Code Civ. Proc. art. 3609 and, unless the Court orders otherwise, do not intend to offer live testimony at the hearing. Plaintiffs do not seek a hearing date less than fifteen days after filing.

Respectfully Submitted:

DALY & BLACK, P.C.



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PLEASE SERVE:

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Clerk of Court for the Parish of Jefferson
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NOTICE ONLY (La. C.C.P. art. 1880):

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