

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI**

GREGORY JOHNSON, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CITY OF KANSAS CITY,

Defendant.

Case No. 1516-CV07365

Div. 13

PLAINTIFF'S FIRST AMENDED PETITION

COMES NOW Plaintiff Gregory Johnson, on behalf of himself/herself and all others similarly situated, by and through undersigned counsel, and for his Class Action Petition against City of Kansas City ("Kansas City" or "Defendant") state as follows:

1. Kansas City authorized an illegal warrant cancellation fee ("warrant fee" or "warrant cancellation fee" or "fee") of \$25 through its municipal code, directly profited from the fee, and allowed the fee to continue to be charged despite the authority to stop it. This violated the law, as no city or municipality can charge fees for the specific purpose of profit. It also violated Sections 488.005, 488.010, 488.012, 488.020 and related sections of the Missouri Revised Statutes, which prohibits the fee, and, when read in their entirety, are designed to prohibit municipal courts and municipalities from inflating court costs, including fees.

PARTIES

2. This action is brought by Plaintiff on behalf of himself and a proposed class ("Class").
3. Plaintiff Gregory Johnson was assessed a warrant fee in 2011, which he paid under duress and without knowledge that the fee was designed to profit Kansas City.
4. Plaintiff and Class reside in the State of Missouri and are Missouri citizens.

5. Defendant City of Kansas City is a municipal corporation within Jackson County operating under the laws of the State of Missouri. It had the authority to manage the municipal court operating in its jurisdiction and it profited from the fees charged by the municipal court.

JURISDICTION

6. This Court has jurisdiction over Defendant because it was formed under the laws of the State of Missouri and is located within Jackson County, Missouri.
7. Plaintiff and Class are all Missouri citizens, many of whom reside in Jackson County.

GENERAL ALLEGATIONS

Warrant Cancellation Fee

8. Defendant collects warrant cancellation fees from Plaintiff and Class.
9. The warrant cancellation fees constitute a court cost in excess of the amount allowed by law.
10. Missouri Revised Statute 488.010 defines “court costs” as they relate to municipal courts. It specifically defines court costs to include “fees.”
11. Missouri Revised Statute 488.012 limits court costs in municipal courts to \$12. This, by definition, also limits fees, including the warrant fee.
12. 488.012 also specifically prohibits costs that substantially exceed the cost of administration of the courts and requires costs, including fees, to be set by the Missouri Supreme Court.
13. 488.012 provides a detailed list of the fees, cost and surcharges that can be collected. The warrant fee is not authorized.
14. Allowing the warrant fee to be added, as an additional fee, would render 488.012 meaningless, as it would mean municipal courts could charge any amount they would like as a “fee” without violating the law, despite the obvious statutory intent of limiting municipal court costs, including fees. It would mean that the detailed statutory structure designed to limit municipal court costs could be circumvented by simply inventing new fees.

15. The warrant cancellation fee produced revenue far in excess of that needed to pay for the cost of cancelling warrants, as cancelling a warrant costs almost nothing.
16. The warrant fee is a tack-on fee. It is not a separate count and cannot be disputed on the merits in the municipal court.
17. Instead, the warrant fee is required to be paid in order to appear in court and contest the underlying charges.
18. This means that a person must pay an illegal fee in order to obtain due process. This violates the Missouri Constitution, specifically Missouri Constitution, Article I, Section 14. It prohibits allowing the cost of court to interfere with access. It states, “That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.”
19. The warrant cancellation 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.
20. A warrant cancellation fee is not authorized by Missouri law. It is illegal. There is not a “count” for a warrant cancellation fee regarding the original infraction and there are no affirmative defenses or any way to litigate the warrant cancellation fee at the time Plaintiff and Class litigated the original infraction. The warrant cancellation 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.
21. The warrant cancellation fee is not designed to promote health, safety, peace, comfort, or general welfare of the public. It is designed to generate profit.
22. The warrant cancellation fee is charged and collected by Defendant in its corporate capacity and constitutes a proprietary function.

23. Specifically, the municipal court collects the fees and passes the revenue on to Kansas City.

As such, Kansas City knowingly profited from an illegal fee that it 1) authorized pursuant to its municipal code, and 2) could have prohibited, but chose not to.

24. Pursuant to Article III of the Kansas City Municipal Code, specifically section Section 313, titled “Administrator of the Municipal Court,” Kansas City was required to appoint an administrator of the municipal court, to be appointed by the City Manager. That administrator served as the Clerk of the Court. That administrator was required to oversee the operation of the municipal court and to pay over all monies collected to the City Treasurer.

25. As a result, Kansas City knew or should have known of the illegal fee, and instead of stopping the fee from being charged, authorized it, allowed it, and profited from it.

26. Kansas City had direct control of the municipal courts.

27. The warrant cancellation fee creates significant problems for Plaintiff and Class, including causing unnecessary and illegal financial duress.

28. 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.

29. 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. Indeed, a warrant had been issued for their arrest, demonstrating the City’s right to immediately arrest any Plaintiff or Class member.

30. Plaintiff and Class paid the “warrant cancellation fee” under circumstances of oppression, where an unlawful demand was paid to avoid a greater loss, and under circumstances amounting to compulsion.

31. Plaintiff had no ability to contest the warrant fee in municipal court and plaintiff had no obligation to do so. The fee was void from inception, meaning it could not be ratified. Further, it was never litigated, meaning there is no res judicata. Finally, it never charged, meaning that it was not part of the case, and challenging it was not a compulsory counterclaim.
32. Further, Defendant actively concealed facts regarding the fee, including the fact that it produced far more revenue than was required and the fact that the fee was designed to produce that revenue, not to help the community.
33. The active concealment of this information constitutes a mistake of fact and means that citizens could not meaningfully dispute the fee in municipal court.
34. The discovery of the profitability of warrant fees only came to light after extensive investigation by state and federal entities arising from incidents in Ferguson.
35. Plaintiff and Class paid the warrant cancellation fee involuntarily.
36. Under the circumstances present in this case, it would be inequitable, unjust and improper to permit Defendant to retain the benefit of the warrant cancellation fee, making the voluntary payment doctrine inapplicable.
37. The circumstances of this case give rise to an independent equitable action, in that the payment of the warrant cancellation fee was induced and accompanied by inequitable conduct of the Defendant.
38. The facts of this case give rise to an independent equitable action, in that Defendant knew the “warrant cancellation fee” and the collection procedure for the “warrant cancellation fee” was illegal.

CLASS ACTION ALLEGATIONS

39. This case is brought and can be properly maintained pursuant to Missouri Rule of Civil Procedure 52.08.

40. 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.
- a. Class A is defined as, “All Missouri Citizens who paid a warrant cancellation fee to Defendant.”
 - b. Class B is defined as, “All Missouri Citizens who are alleged to currently owe a warrant cancellation fee to Defendant.”
41. 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.
42. 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.
43. 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 the fee.
44. 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.
45. 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.
46. 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.
47. 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 cancellation fee charged by Defendant was in violation of state law;
- b. Whether the fees were instituted to create profit for Defendant;
- c. Whether the fees caused harm to the public welfare;
- d. Whether the fees eroded confidence in the courts and the rule of law;
- e. Whether it would be unjust for Defendant to retain the fees;
- f. Whether Defendant knew the fees were illegal at the time it was charging them;
- g. The amount collected in warrant cancellation fees;
- h. The policies for enforcing the warrant cancellation fees;
- i. The purpose of the warrant cancellation fees;
- j. Whether an injunction prohibiting future collection and assessment of the fees is appropriate;
- k. Whether any defenses asserted by Defendant are appropriate;
- l. Whether punitive damages are appropriate;
- m. Whether attorneys' fees should be awarded.

48. 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.

49. 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.

50. 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.

51. 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.
52. Damages can be calculated from records that the Defendant possesses and do not require individual inquiry.
53. 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.
54. 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.
55. For these reasons, this case is maintainable as a class action pursuant to Missouri Rule of Civil Procedure 52.08.

COUNT I: DECLARATORY JUDGMENT

56. 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.
57. 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 cancellation 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.

58. Plaintiff and Class have a legal right to a declaratory judgment pursuant to Missouri Revised Statute 527.020. It states that Any person . . . whose rights, status or other legal relations are affected by a statute, **municipal ordinance**, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.
- (Emphasis added.)
59. The fees at issue are prohibited by state law. The practice of charging the fees conflicts with state law that specifically enumerates the proper fees to be charged by municipal courts. In that way, Plaintiff's rights are affected by the statutes referenced in this petition. .
60. Further, charging a fee in order to profit the municipality in its role as a corporation is illegal.
61. Finally, Defendant authorized the fee in its municipal code. Kansas City Municipal Code, Article X deals with municipal courts. Section 2-1463 is titled "Cost and fees generally." Parts (a) and (b) set court costs at \$12 for moving violations and \$1 for non-moving violations. Part (c) authorizes the clerk to establish additional fees. It states:
- "In addition to any costs which may be assessed by the court pursuant to subsection (a) or subsection (b) of this section or pursuant to other statute, ordinance or court rule, the court administrator is authorized to establish a schedule of fees designed to reflect the cost of providing other services, including the preparation of surrender papers, a certified copy of any record, a copy of any information, pleading or other document. No charge may be imposed under this subsection for the preparation of any such document for a governmental agency."
62. The ordinance demonstrates 1) that Kansas City authorized the clerk to create fees, including the warrant cancellation fee, and 2) it proves that Kansas City had the authority to regulate the warrant cancellation fee and chose not to stop it from being charged.

63. Section 2-1463 is in violation of Missouri law, as it authorizes fees that exceed the amount allowed by 488.012.

64. Pursuant to Sections 527.010, 527.020 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 Article X, Section 2-1463 of the Kansas City Municipal code authorizes the fee and whether it violates the law;
- d. Whether Plaintiff and Class are entitled to recover the payments made; and
- e. 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

65. 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 the damages class.

66. For the reasons set forth in this Petition, the fees were in violation of state law and more specifically Section 488.012 and laws prohibiting municipalities from acting in their own interest, and against the interest of their citizens. The warrant cancellation fees are illegal.

67. Defendant knew or had reason to know that the fees were contrary to state law.

68. Defendant specifically profited from the charging of the fees, as the courts paid revenue from the fees to Defendant.
69. 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.
70. Plaintiff and Class conferred a benefit upon Defendant by making payments pursuant to these unlawful fees.
71. Defendant has accepted and retained monies paid by Plaintiff and Class pursuant to these unlawful fees.
72. Defendant has acknowledged receipt of the unjust benefit conferred by Plaintiff and Class.
73. 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.
74. 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.
75. Therefore, it is unjust, inequitable, and/or unconscionable for Defendant to retain monies paid by Plaintiff and Class.
76. As a result of Defendant's conduct, Defendant has been unjustly enriched at the expense of Plaintiff and Class in excess of \$25,000.
77. 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

78. 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 the damages class.

79. Defendant had received monies which in equity and good conscience ought to be paid to Plaintiff and the Class.

80. 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

81. 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 the damages class.

82. Plaintiff and Class paid the warrant cancellation 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.

83. 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.

84. 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

85. 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 the damages class.
86. Defendant had a duty to collect only the municipal fees authorized by law.
87. Defendant had a right and duty to control its municipal courts.
88. Defendant had a legal duty to appoint an administrator who would operate as the clerk of the municipal courts and oversee their operation and the transfer of money from the courts to Defendant.
89. Defendant had a duty not to collect fees for profit.
90. Defendant had a duty not to authorize illegal fees via its municipal code.
91. Defendant breached its duty by collecting the warrant cancellation fee, failing to oversee the courts in a reasonable manner, and by failing to stop the collection of illegal fees.
92. 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.
93. Defendant's collection of the warrant cancellation 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.
94. 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.
95. 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

96. Plaintiff and Class re-allege and incorporate by reference all paragraphs preceding Count I in this petition. This count is brought for the damages class.

97. Section 407.025 applies to suits against “corporations,” and Defendant is a municipal corporation incorporated under Missouri law.

98. Defendant is a corporate citizen who can, and in this case did, act in its corporate capacity.

99. The collection of the warrant cancellation fee was solely in order to produce profit for the corporation.

100. To this end, Defendant billed and charged Plaintiff and Class for the fees.

101. Plaintiff and Class were required to pay the charges in exchange for an alleged service such as the cancellation of a warrant, or the right to appear in court.

102. Defendant issued a receipt for payment for the service.

103. Charging a price for a specific service constitutes a sale.

104. These services constitutes merchandise pursuant to Chapter 407.

105. The payment of the warrant cancellation fee by Plaintiff and Class members and the charging of the fee by Defendant was for personal, family, and household purposes.

106. 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.
107. 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.
108. 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

COUNT VII: Violation of Missouri Constitution, Article I, Section 14

109. Plaintiff and Class re-allege and incorporate by reference all paragraphs preceding Count I in this petition. This count is brought for both the damages and injunctive class.
110. Article I, Section 14 of the Missouri Constitution prohibits allowing courts costs or fees to inhibit access to justice. Specifically, it states, "That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."
111. The warrant cancellation fee constituted the sale of justice, as it the fee limited access to courts, discouraged participation, exploited citizens, and was designed to profit Defendant rather than promote justice.
112. The ability to raise this issue did not arise until the fee was charged. The fee was not part of the underlying court case, was not a charge in the underlying case, and was not

appropriately contested in the case. Rather, it was a fee charged by the municipal court separate and apart from any charges.

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 Plaintiff's counsel lead counsel in this matter;
- 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 cancellation 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 respectfully requests a trial by jury on all issues so triable.

Respectfully Submitted,

CAMPBELL LAW LLC

/s/ John Campbell

John E. Campbell, MO 59318
Erich Vieth MO 29850
Alicia Campbell MO 59586
Campbell Law, LLC
1500 Washington Avenue, Suite 100
St. Louis, MO 63103
P: 314.588.8101 F: 314.588.9188
erich@campbelllawllc.com
john@campbelllawllc.com
alicia@campbelllawllc.com

Michael-John Voss #61742
John D. McAnnar #61636
Thomas Harvey #61734
812 N. Collins Alley, Laclede's Landing St.
Louis, MO 63102
P: 855.724.2489 F: 314.621.8071
mjvoss@archcitydefenders.org
jmcannar@archcitydefenders.org
tharvey@archcitydefenders.org

Mitchell L. Burgess, MO #47524
Blake P. Green, MO #60833
1000 Broadway, Suite 400
Kansas City, Missouri 64105
(816) 471-1700

(816) 471-1701 FAX
mitch@burgessandgreen.com
blake@burgessandgreen.com

RALPH K. PHALEN, ATTORNEY AT LAW
Ralph K. Phalen, MO #36687
1000 Broadway, Suite 400
Kansas City, Missouri 64105
(816) 589-0753
(816) 471-1701 FAX

Attorneys for Plaintiff and Class

CERTIFICATE OF SERVICE

The foregoing document was electronically filed on August 14, 2015, via the Missouri efilings system and all attorneys of record were provided a copy via the efilings system.

/s/ John Campbell