

MARK GARBER, ET AL : 15TH JUDICIAL DISTRICT COURT  
VERSUS : DOCKET NUMBER: 20196286, DIV. A  
LAFAYETTE PARISH, ET AL : LAFAYETTE PARISH, LOUISIANA

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**AMENDED RECONVENTIONAL DEMAND**

NOW INTO COURT, through undersigned counsel, come the PARISH OF LAFAYETTE and LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT (collectively “the Parish”), sought to be made defendants herein, which move the Court as Plaintiffs-in-Reconvencion, and who aver, as follows:

1.

Made Defendants-in-Reconvencion are MARK GARBER, SHERIFF OF LAFAYETTE PARISH, AND THE LAFAYETTE PARISH LAW ENFORCEMENT DISTRICT. Sheriff Garber is the duly elected Sheriff for the Parish of Lafayette, and the Lafayette Parish Law Enforcement District is a political subdivision created by La. R.S. 33:5901 (formerly La. R.S. 33:9001), who can be served through Sheriff Mark Garber, as the ex officio Chief Executive Officer of the Law Enforcement District at 316 West Main Street, Lafayette, LA 70501.

2.

Answering in reconvencion, the Parish shows that the Sheriff’s Office has an affirmative obligation to reimburse costs paid by the Parish for which the Parish was not legally obligated to pay by statute or otherwise, or for which the Parish overpaid due to poor accounting practices of the Sheriff’s Office.

3.

The Sheriff’s Office has an affirmative obligation to reimburse costs already covered and paid by the Parish in error, related to the housing and care of Department of Public Safety and Corrections Prisoners or other non-parish prisoners, or otherwise unrelated to the statutory functions of the Sheriff’s Office.

4.

Plaintiffs-in-Reconviction show that they have made payments over and above what was legally due under the statutory mandates, and due to poor accounting by the Sheriff's Office, Plaintiffs-in-Reconviction are entitled to either reimbursement of monies paid but not due and/or a credit for any such overpayment.

5.

The Sheriff houses prisoners from the Department of Public Safety and Corrections (DOC Prisoners), as well as federal prisoners (collectively, "non-parish prisoners"). There is no statutory mandate that the Parish pay the housing, medical and keeping expenses associated with these non-parish prisoners. The evidence at trial will show that the Sheriff has moved parish prisoners out of the parish jail to instead house those DOC Prisoners and federal prisoners for whom he can garner a much higher statutory per diem ("manday" pay rate) over and above what a parish government is statutorily obligated to pay. In this case, the Sheriff's Office has been reimbursed for holding non-parish prisoners in the jail, and has even been paid for "mandays" by the Parish for prisoners who were no longer incarcerated. Despite these facts, the Sheriff's Office has continued to bill the Parish for costs associated with the jail as a whole – a jail that is largely or mainly used to house *non-parish* prisoners.

La. R.S. 15:824(B) governs persons committed to the Louisiana Department of Public Safety and Corrections ("DOC") but held in parish jails. It provides that, "[w]hen the State makes payment in accordance with this Subsection, **no additional compensation from the parish governing authority shall be paid to the sheriff for the care of those prisoners being held for the department.**" La. R.S. 15:824(B)(2). Many of the expenses for which the Sheriff's Office bills the Parish – medical services, nursing, a physician, medical malpractice insurance, clergy, prisoner feeding, a dietician, correctional healthcare, and educators – are clearly expenses "for the care of . . . prisoners". Therefore, the Sheriff's Office is unlawfully double-dipping in the face of a direct statutory command. Defendants-in-Reconviction are seeking unlawful "additional compensation from the parish governing authority"<sup>1</sup>. Thus, the Parish prays for a credit and/or reimbursement for any payments made for the care of non-parish prisoners.

6.

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<sup>1</sup>*Compare Ouachita Parish Police Jury v. State*, 509 So. 2d 74 (La. 1 Cir. 1987) (ordering the State directly to reimburse two parishes under La. R.S. 15:824(B)).

The Sheriff's Office has been unjustly enriched without cause by billing and receiving payments from the Parish for non-parish prisoners' housing, feeding, medical care, etc. Under the statutory law of enrichment without cause, "[a] person who has been enriched without cause at the expense of another person is bound to compensate that person." La. Civ. Code art. 2298; *see also Gulfstream Services, Inc. v. Hot Energy Services, Inc.*, 907 So. 2d 96, 101 (La. App. 1 Cir. 2005)(setting out the elements of enrichment without cause). Accordingly, the Sheriff's Office has an affirmative obligation to reimburse the Parish for any payments already made for the care of DOC Prisoners and/or other "non-parish" prisoners for whom the Sheriff jails or has jailed.

7.

In addition, the obligation extends beyond *care* and also beyond DOC *prisoners*. The functions of the Sheriff's Office are defined by La. R.S. 13:5539. Housing of non-parish prisoners, while permitted, is not among the functions of the Sheriff's Office. Thus, any funding request to house non-parish prisoners is illegitimate unless it is "related to the function of [the] office". *Reed v. Washington Parish Police Jury*, 518 So. 2d 1044, 1049 (La. 1988). Therefore *all* expenses relating to non-parish prisoners are illegitimate if billed to the Parish. These include, insofar as they support those prisoners, the costs of health care, consumables, uniforms, mattresses, insurance, maintenance, cost of counselors, cost of malpractice insurance, cost of educators, cost of clergy, and even the depreciation of the jail itself. Payments by the Parish going to any of these enumerated and unenumerated items have unjustly enriched the Sheriff's Office, and it has an affirmative obligation to reimburse the Parish.

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8.

The Sheriff's Office has been enriched without cause at the expense of the Parish. It has billed for the care of DOC prisoners, in direct contravention of a statutory command. And it has billed for other expenses relating to non-parish prisoners, in contravention of the case law on legitimate expenses. Plaintiffs-in-Reconvention urge this Honorable Court to order the Sheriff's Office to reimburse the Parish for any such payments made without cause or statutory authority subject to reimbursement in accordance with the law of enrichment without cause.

9.

The Sheriff's Office has selected medical care providers in the past, and the Sheriff's Office has submitted invoices to the Parish for payment of these services which exceeded the Parish's statutory obligation to pay, since it included medical services provided to non-parish prisoners and/or city prisoners (whose medical expenses were otherwise covered by an Intergovernmental Agreement ("IGA") between LCG and the Laayette Parish Law Enforcement District. Plaintiffs-in-Reconvention seek reimbursement and/or a credit for any such payments made for medical services provided to non-parish prisoners and/or city prisoners.

10.

In addition, the Sheriff's Office has elected to house parish prisoners outside of the parish without following the appropriate statutory guidelines found in La. R.S. 15:706(A). The Sheriff's Office does not have unfettered discretion to control the parish vs. non-parish mix/demographics of the jail population. Instead, the transfer of parish prisoners to other, out of parish facilities should be in compliance with La. R.S. 15:706(A). The Louisiana Attorney General has opined: "Therefore, we must conclude that the sheriff may transfer prisoners when it is in accordance with La. R.S. 15:706, but do not feel the transfer is proper when there is no question of safety or unfit conditions but merely as a money making situation." La. Atty. Gen. Op. No. 94-18 (February 17, 1994). Upon information and belief, Lafayette Parish prisoners have been "replaced" by non-parish prisoners at the LPCC facility over the years, thereby forcing the Parish to incur significant and unnecessary expenses for housing parish prisoners in out-of-parish facilities. For instance, under La. R.S. 13:5535, the parish's statutory per diem obligation to pay the Sheriff's Office is a minimum of \$3.50/day; however, if that same parish prisoner is housed in another facility out of Lafayette parish, the Parish has to pay the higher

manday rate of \$25.39/day (see La. R.S. 15:824).<sup>2</sup> This exorbitant increase in costs to the Parish has come without compliance with La. R.S. 15:706.

11.

When the Sheriff's Office wants to house parish prisoners in a different facility, the law requires: If the prisoner or prisoners to be transferred are not under sentence to the Department of Public Safety and Corrections, the sheriff proposing to make the transfer shall notify the court which set bail for the prisoner or prisoners at least seventy-two hours before making the transfer.

While the Parish may not be able to prevent the Sheriff's Office from housing DOC inmates from other parishes, it may attempt to prevent the transfer of its own parish prisoners out of its Parish jail by showing Section 706's factors have not been met. Upon information and belief, parish prisoners have been shipped out of LPCC without any showing that Section 706's factors/requirements have been met to any court of competent jurisdiction, and for any and all such prisoners transferred, the Parish should be entitled to a credit of the difference between what the Parish is statutorily obligated to pay for such a prisoner versus what the Parish has paid over the past couple of years (which has shown an over 300% increase in "out-of-parish" Mandays for the housing of Lafayette Parish prisoners in out of parish facilities). Such an increase of cost to the Parish was neither reasonable nor necessary, nor did the increased cost have to be incurred, but for the Sheriff's own violation of state law on housing of parish prisoners. There are no judicial decrees finding that LPCC is unsafe or unfit for the security of prisoners, nor has the Parish been able to locate any requests from the Sheriff to the Court which set bail for any such parish prisoner to notify the Court for the reasons of any such parish prisoner transfer to an out-of-parish facility. Plaintiffs-in-Reconviction pray for a credit or for reimbursement from the Sheriff's Office for the

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<sup>2</sup>La. R.S. 15:824(B)(1)(a) controls the *per diem* paid for housing of DOC Prisoners: "the sum of twenty-five dollars and thirty-nine cents [\$25.39] per day for Fiscal Year 2019-2020, the sum of twenty-six dollars and thirty-nine cents [\$26.39] per day for Fiscal Year 2020-2021, and each fiscal year thereafter."

unreasonable costs the Parish has paid in recent years due to the Sheriff's practices of shipping out parish inmates without conforming to the statutory mandate outlined in La. R.S. 15:706.

12.

Moreover, to the extent that the Parish has paid for the transportation of all prisoners (no matter the designation of parish vs. non-parish), again, the Parish believes that it has overpaid amounts not due. La. R.S. 15:706(D) governs which agency/entity pays for the transport of a prisoner from one parish to another parish for the purposes of appearing in Court. That section reads:

The following provisions shall govern the transportation of each prisoner who is incarcerated in a parish prison or other correctional facility located within the state and whose presence is required in a criminal or civil court proceeding in a district court for a parish outside of the judicial district in which the prisoner is incarcerated:

- (1) The district attorney who is to try the prisoner, or the party requesting the prisoner's presence in a civil proceeding, as the case may be, shall apply to the court in which the court proceeding is to be held for an order directing the transportation of the prisoner. The district attorney or the party requesting the prisoner's presence, as the case may be, has the burden of establishing just cause for the prisoner's presence.
- (2) Upon finding that the prisoner's presence is required, the court shall order the sheriff of the parish in which the criminal or civil court proceeding is to be held to take custody of the prisoner in the parish in which the prisoner is incarcerated and to transport the prisoner to the parish in which the criminal or civil court proceeding is to be held and return the prisoner to that parish if so required.
- (3) The governing authority of the parish in which the criminal court proceeding is to be held shall reimburse the sheriff of that parish for the expenses incurred by that sheriff in transporting the prisoner to the criminal court proceeding and for returning the prisoner to the parish in which he was incarcerated. In the case of a civil court proceeding, the party requesting the presence of the prisoner shall deposit into the registry of the court an amount set by the court to be sufficient to cover the costs of transporting the prisoner to the civil court proceeding and returning the prisoner to the parish in which he was incarcerated. Upon application of the transporting agency, the court shall pay the transporting agency the costs of transporting the prisoner.
- (4) The provisions of this Subsection shall apply to all prisoners who are incarcerated in parish prisons, regardless of whether they are sentenced to the custody of the Louisiana Department of Public Safety and Corrections or are sentenced directly to incarceration in the parish prison.

Thus, for parish prisoners who are housed out-of-parish (and who were displaced by DOC or other non-parish prisoners at the LPCC facility), transportation of those parish prisoners to their criminal court hearings within Lafayette Parish increases the cost to the Parish, since the Parish has to bear the cost to get its own Parish prisoner back to Lafayette Parish for Court. Moreover, the Sheriff, through the Warden at LPCC, has implied that the Parish is responsible

for all transportation cost of *all* prisoners, no matter how classified. This is simply untrue. For instance, if a DOC prisoner is held in LPCC but needs to attend a criminal court hearing in a different parish, that parish, not LCG, is responsible for that cost. Moreover, the Parish does not owe the Sheriff's Office reimbursement for transportation expenses directly related to DOC inmates, federal inmates, and out-of-parish inmates. Those costs, including cost of gasoline for transportation of such an inmate to a hospital, for instance, should be paid by the Sheriff's Office out of the per diem pertaining to those non-parish inmates. *Prator v. Caddo Parish*, 38,0855 (La. App. 2 Cir. 5/5/05).

13.

In the latter half of 2019, the Sheriff's Office stopped its prior practice of breaking down invoices for various variable costs (such as medical expenses) on a parish vs. non-parish prisoner basis; thus, the Sheriff's Office has presented numerous invoices for payment with no clear accounting and assurance that the Parish would pay only for parish prisoners, as mandated by law. The Parish is not responsible in any way for the housing, transportation, feeding, keeping, or the medical needs of non-parish prisoners. In fact, the CFO of the Sheriff's Office admitted that instructions were given to omit parish vs. non-parish prisoner information from invoices presented to LCG for payment, claiming that the census data was "not required." However, current case law and persuasive authority mandate that the pro-rata share of variable expenses based on prison population be paid according to prisoner classification. Thus, for any such invoices paid by LCG at the 100% rate since the Sheriff's Office's accounting and billing practices have changed (or at any time beforehand), Plaintiffs-in-Reconviction pray for reimbursement and/or a credit for any such overpayments.

14.

Moreover, historically, invoices for doctors and mental health expense services had been split 50/50 between the Parish and the Sheriff's Office; however, in December 2018, the Sheriff's Office started charging the Parish 100% of these costs. Furthermore, dental invoices submitted in the past were broken down by classification of the inmate based on parish vs. non-parish prisoner status; however, that practice was recently stopped, as well. Furthermore, the Parish has overpaid for nurses (both quarterly and contract nurses) at a rate of 100%, when clearly, the case law in this area categorically holds that the Parish has no obligation for the care of non-parish prisoners. And moreover, in light of the IGA in place between LCG and the

Lafayette Parish Law Enforcement District for the housing, care and maintenance of city prisoners, no additional funds from Plaintiffs-in-Reconvention were due for the medical expenses, including pharmaceutical expenses and lab work, but were paid by Plaintiffs-in-Reconvention despite the controlling IGA. Plaintiffs-in-Reconvention pray for reimbursement for any overpayments made on invoices for physicians and mental health expense services, dental services, nurses (quarterly and contract), pharmaceutical costs, blood work costs, etc., or for a credit against future obligations.

15.

Furthermore, while the invoices for prescriptions has been split out by parish vs. non-parish inmates, LCG's accounting department has found numerous errors resulting in even more unnecessary and unwarranted charges to the Parish which were paid in error and for which the Parish is entitled to a credit or reimbursement.

16.

In addition, the Parish has been paying invoices for lab work performed on inmates at 100%, while the clear weight of the jurisprudence dictates that this medical expense would be a variable cost for which the Parish is only responsible for paying the lab work invoices for labs performed on parish inmates. Here again, the IGA between LCG and the Lafayette Parish Law Enforcement District already contemplated and made payment for medical expenses for city inmates, which would include lab work invoices, and the Parish's payment for any lab work for non-parish prisoners is not statutorily mandated. Plaintiffs-in-Reconvention are entitled to a credit or reimbursement from the Sheriff's Office of the amounts overpaid for lab work services, which credit or reimbursement should be calculated by the pro rata share of parish vs non-parish prisoner census records.

17.

Moreover, the Parish paid for medical supplies not only for the LPCC facility, but for the facility located on Willow Street, which is owned and run by the Sheriff's Office, where no parish prisoners are incarcerated. The Parish seeks reimbursement and/or a credit for any/all medical supplies paid for the Willow Street facility for which the Parish is not mandated by law to pay.

18.

AND FURTHER PRAYING, the plaintiffs-in-reconvencion, the PARISH OF LAFAYETTE and LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT, further pray that the aforementioned Defendants-in-Reconvencion be served and cited to appear, and after all legal delays and due proceedings are had, that there be judgment herein in favor of the Plaintiffs-in-Reconvencion, the PARISH OF LAFAYETTE and LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT, and against the Defendants-in-Reconvencion, Mark Garber, in his official capacity as Sheriff of Lafayette Parish, and the Lafayette Parish Law Enforcement District, jointly, severally and in solido for the full and true sum of any amounts recovered or obtained by the original plaintiffs, Mark Garber, in his official capacity as Sheriff of Lafayette Parish, and the Lafayette Parish Law Enforcement District, and that Defendants-in-Reconvencion be ordered to reimburse Plaintiffs-in-Reconvencion for all costs paid by the PARISH OF LAFAYETTE and LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT for the maintenance, housing and medical care of prisoners for which Plaintiffs-in-Reconvencion were not obligated to pay by law, statute, jurisprudence, or by Intergovernmental Agreement between the parties.

Plaintiffs-in-reconvencion further pray that this Court sign an order allowing this Amended Reconvencion Demand to be filed and served upon the aforementioned Defendants-in-Reconvencion.

AND FOR ALL GENERAL AND EQUITABLE RELIEF, ETC.

BY:   
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ATTORNEYS FOR the PARISH OF LAFAYETTE and  
LAFAYETTE CITY-PARISH CONSOLIDATED  
GOVERNMENT

PLEASE SERVE:

**Mark Garber, in his official capacity  
as Sheriff of Lafayette Parish, and the  
Lafayette Parish Law Enforcement District,**  
by and through their attorney of record,  
Mr. T. Jay Seale, III  
Mr. Glen R. Galbraith  
Seale & Ross, P.L.C.  
200 N. Cate Street  
Hammond, Louisiana 70404

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served upon counsel for all parties to this proceeding by mailing the same to each by first class United States mail, properly addressed, postage prepaid, at the last known address.

Lafayette, Louisiana, this 4<sup>th</sup> day of May, 2022.

  
ROBERT M. KALLAM