

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

GARY PATRICK STERR, individually and)
on behalf of all others similarly situated,)
)
Plaintiff,)
)
vs.)
)
JESSICA TRAME, in her official capacity as)
Chief of the Firearms Services Bureau, and)
MICHAEL W. FRERICHS, in his official)
Capacity as Treasurer of the State of Illinois,)
)
Defendants.)

No. 15-L-1337

ANSWER

NOW COME Defendants JESSICA TRAME, in her official capacity as Bureau Chief of the Firearm Services Bureau, and MICHAEL W. FRERICHS, in his official capacity as the Treasurer of the State of Illinois, by and through their attorney, Lisa Madigan, Attorney General for the State of Illinois, and for their Answer and Affirmative Defenses to the Plaintiff's Complaint state as follows:

1. At all times relevant, Plaintiff Gary Patrick Sterr ("Sterr") is a citizen and resident of Wood River, Madison County, Illinois.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1.

2. At all times relevant, Defendant Jessica Trame ("Trame") is the Chief of the Illinois Firearms Services Bureau, and is sued in her official capacity.

RESPONSE: Defendants admit that Defendant Trame is the Chief of the Firearms Services Bureau of the Illinois State Police, and that Plaintiff has sued her in her official capacity. Defendants lack knowledge or information sufficient to form a belief about what time frame Plaintiff refers to when using the term "[a]t all times relevant."

3. At all times relevant, Defendant Michael W. Frerichs ("Frerichs") is the Treasurer of the State of Illinois, and is sued in his official capacity.

RESPONSE: Defendants admit that Defendant Frerichs is the Treasurer of the State of Illinois, and is sued in his official capacity. Defendants lack knowledge or information sufficient to form a belief about what time frame Plaintiff refers to when using the term "[a]t all times relevant."

4. In order to lawfully possess a firearm in Illinois, it is generally required to have in a person's possession a currently valid Firearms Owners Identification Card ("FOID").

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4. Specifically, it is unclear what is meant by the term "generally."

5. Per 430 ILCS 65/5

"The Department of State Police shall either approve or deny all applications within 30 day from the date they are received, and every applicant found qualified under Section 8 of the this Act by the Department **shall be entitled to a Firearm Owner's Identification Card upon the payment of a \$10 fee.** Any applicant who is an active duty member of the Armed Forces of the United States, a member of the Illinois National Guard, or a member of the Reserve Forces of the United States is exempt from the application fee. \$6 of each fee derived from the issuance of Firearm Owner's Identification Cards, or renewals thereof, shall be deposited in the Wildlife and Fish Fund in the State Treasury; \$1 of the fee shall be deposited in the State Police Services Fund and \$3 of the fee shall be deposited in the State Police Firearm Services Fund."

Source: P.A. 98-63, eff 7-9-13.) (bold added).

RESPONSE: Defendants admit that Plaintiff has accurately cited the language in Section 5 of the Firearm Owners Identification Act, 430 ILCS 65/5, with added emphasis.

6. On October 6, 2015, Plaintiff Sterr filed an application for a FOID card, and was charged \$11.00. See Ex. A.

RESPONSE: Defendants admit the allegations in this paragraph.

7. That the different [sic] in the charge mandated by statute (\$10.00) and the fee actually charged (\$11.00) is a \$1.00 charge for the Illinois E-pay program.

RESPONSE: Defendants admit that the \$11.00 charged is more than the \$10.00 fee set forth in the FOID Act. Defendants deny the remaining allegations in this paragraph.

8. That the Illinois E-pay program is a program administered by the Illinois Treasurer. (Ex. D).

RESPONSE: Defendants admit the allegations in this paragraph.

9. That per the Illinois Treasurer, “[w]e build web pages specific to your payment types and collection requirements. It is easy to guide your Customers through the payment process. Right up front we notify your Customers that a convenience fee will be charged allowed [sic] them to opt out if they don’t want to pay our payment processing vendor fee.” (Ex. F)

RESPONSE: Defendants admit that Plaintiff has quoted a section of the Illinois E-pay website. Defendants deny that the quoted language has any applicability to the transactions at issue in this case.

10. However, unlike the typical E-pay website set up by the Illinois Treasurer, the FOID application website does not notify its Customers that a convenience fee will be charged allowed [sic] them to opt out if they don’t want to pay our payment processing vendor fee.

RESPONSE: Defendant Trame denies that customers are not notified that a service fee will be charged. Defendant Frerichs lacks knowledge or information sufficient to form a belief about notifications provided on the FOID application website. Defendants admit that customers cannot opt out of the fee.

11. In fact, it is impossible to apply for an Illinois State FOID card (excluding the limited category of no charge FOID cards) without payment of the \$1.00 service charge or

“convenience,” as sometime in early 2015, the Firearms Services Bureau stopped accepting paper applications that allowed an applicant to simply mail in a check or money order, and thereby, only pay the \$10.00 fee mandated by statute.

RESPONSE: Defendants admit the allegations in this paragraph.

12. In fact, the \$10.00 fee mandated by statute is so specific, that it is broken down into exactly who gets each of those \$10.00, and for what purposes. Nowhere in the FOID statute is any authorization to charge more than \$10.00, or to charge a “service fee” or “convenience fee.”

RESPONSE: Defendants admit that the Firearm Owners Identification Act establishes how money from the \$10.00 fee is to be distributed. Defendants deny the remaining allegations in this paragraph.

13. That the \$1.00 fee is not even imposed to reimburse for use of credit cards, as even using an electronic check imposes the excess \$1.00 fee.

RESPONSE: Defendants deny that the \$1.00 fee is not imposed to reimburse use of credit cards. Defendants admit that the \$1.00 fee is applied to electronic check.

14. That by imposing a \$1.00 “service charge” or “convenience fee” surcharge for applying online, and at the same time ending traditional mail in paper applications, Defendant Trame is unilaterally imposing, without statutory or other lawful authority, a ten percent surcharge on FOID cards.

RESPONSE: Defendants deny the allegations in this paragraph.

15. That Section 2-801 of the Code of Civil Procedure sets forth the elements necessary for the maintenance of a class action, all of which are met in this case.

RESPONSE: Defendants admit that Section 2-801 of the Illinois Code of Civil Procedure sets forth the prerequisites for the maintenance of a class action. Defendants deny that all elements of a class action are met.

16. The class is so numerous that joinder of all members is impracticable as Defendants have charged a minimum of ten thousand people this \$1.00 FOID "service charge", and possibly substantially more, well into the hundreds of thousands or millions of class members. For instance, in 2011, more than 321,000 FOID applications were received by Defendants.

RESPONSE: Defendant Trame admits that more than 321,000 FOID applications were received in 2011. Defendant Frerichs lacks knowledge or information sufficient to form a belief about the truth of the allegation that more than 321,000 FOID applications were received in 2011. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegation that "substantially more" than ten thousand individuals were charged a \$1.00 service fee, as it is unclear what that term is meant to convey. Defendants admit that the putative class would be so numerous as to make joinder impracticable. Defendants deny the remainder of the allegations in this paragraph.

17. There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members, specifically, whether the \$1.00 FOID surcharge is legal, and if not, what are the damages.

RESPONSE: Defendants admit the allegations in this paragraph.

18. The representative parties will fairly and adequately protect the interest of the class.

RESPONSE: Defendants deny the allegations in this paragraph.

19. The class action is an appropriate method for the fair and efficient adjudication of the controversy.

RESPONSE: Defendants deny the allegations in this paragraph.

20. The Plaintiff proposes the following class be certified:

All persons who applied for a FOID card at any time in 2015, through and including the date of final judgment, and paid a fee in excess of \$10.00 for said FOID card.

RESPONSE: Defendants admit that Plaintiff proposes what is stated in this paragraph. Defendants deny that the proposed class should be certified.

21. The Plaintiff proposes that Gary Patrick Sterr be appointed class representative, and that Thomas G. Maag and the Maag Law Firm, LLC, be appointed class counsel.

RESPONSE: Defendants admit that Plaintiff proposes what is stated in this paragraph. Defendants deny that the proposed appointments should be made.

22. That Plaintiff Sterr, and each member of the Plaintiff class was compelled to pay money to Defendants, as heretofore alleged.

RESPONSE: Defendants deny the allegations in this paragraph.

23. That Defendants had no legal right to demand money, specifically the \$1.00 services charge as heretofore alleged.

RESPONSE: Defendants deny the allegations in this paragraph.

24. That payment was necessary in order to avoid an injury to Plaintiff's, and the Plaintiff classes' business, person, or property.

RESPONSE: Defendants deny the allegations in this paragraph.

25. As a proximate cause of the foregoing, Plaintiff Sterr has been personally injured in the amount of \$1.00, and the Plaintiff class has been damaged in an amount well in excess of \$50,000.00

RESPONSE: Defendants deny the allegations in this paragraph.

Respectfully submitted,

JESSICA TRAME,

Defendant,

LISA MADIGAN, Attorney General
of the State of Illinois,

Attorney for Defendant,

Bilal A. Aziz, #6312287
Assistant Attorney General
500 South Second Street
Springfield, IL 62706
Phone (217) 557-0261
Fax (217) 782-8767

Of Counsel.

By: 

Bilal A. Aziz

Assistant Attorney General

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MADISON COUNTY, ILLINOIS**

GARY PATRICK STERR, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

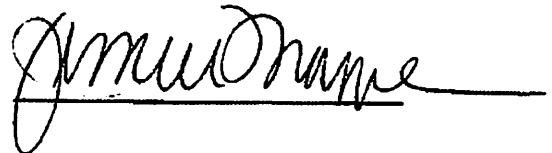
No. 15-L-1337

JESSICA TRAME, in her official capacity as
Chief of the Firearms Services Bureau, and
MICHAEL W. FRERICHS, in his official
Capacity as Treasurer of the State of Illinois,

Defendants.

CERTIFICATION

I, JESSICA TRAME, in my official capacity as Bureau Chief for the Firearm Services Bureau of the Department of State Police certify under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that I have read the Defendants' Answer to Plaintiff's Complaint in this matter, and that the statements asserting lack of knowledge sufficient to form a belief in the answers to paragraphs 1, 2, 3, 4, and 16 of the Complaint are true and correct to the best of my knowledge and belief.



DATE

1/29/2016

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Chief of the Firearms Services Bureau, and)
MICHAEL W. FRERICHS, in his official)
Capacity as Treasurer of the State of Illinois,)

Defendants.)

CERTIFICATION

I, Rodrigo Garcia, in my official capacity as Chief Financial Officer of the Office of the Treasurer certify on behalf of the Office of the Treasurer under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that I have read the Defendants' Answer to Plaintiffs' Verified Complaint in this matter, and that the statements asserting lack of knowledge sufficient to form a belief in the answers to paragraphs 1, 2, 3, 4, 10, and 16 of the Complaint are true and correct to the best of my knowledge and belief.



1/4/2016

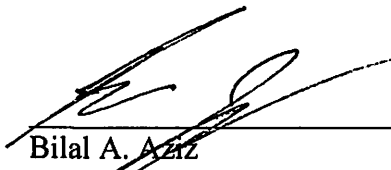
DATE

CERTIFICATE OF SERVICE

Bilal A. Aziz, Assistant Attorney General, herein certifies that he has served a copy of the foregoing *Defendants' Answer* upon:

Thomas G. Maag
Maag Law Firm, LLC
22 West Lorena Ave.
Wood River, IL 62095

by mailing a true copy thereof to the address referred to above in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on January 29, 2016.



Bilal A. Aziz
Assistant Attorney General

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