

STATE OF MICHIGAN
IN THE COURT OF APPEALS

44TH CIRCUIT COURT, 53RD DISTRICT
COURT AND LIVINGSTON COUNTY
PROBATE COURT,

Case No. 370043

Plaintiffs,

v

COUNTY OF LIVINGSTON AND
LIVINGSTON COUNTY BOARD OF
COMMISSIONERS,

Defendants.

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DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT

Defendants Livingston County (County) and the Livingston County Board of Commissioners (Board) answers Plaintiffs' Complaint as follows:

1. This is an action seeking a writ of mandamus and other declaratory or injunctive relief as may be appropriate brought by Plaintiffs Livingston Courts against Defendants County of Livingston ("County") and the Livingston County Board of Commissioners ("Board") in response to Defendants' adoption of their Fiscal Year 2024 Budget (the "2024 Budget").

ANSWER: The Defendants plead no contest to the allegation that Plaintiffs have asserted claims seeking a writ of mandamus and other declaratory or injunctive relief.

It is denied as untrue that Plaintiffs are entitled to any of the relief sought.

2. Plaintiff 44th Circuit Court (“Circuit Court”) is the circuit court for the County of Livingston. Const 1963, Art 6, § 11; MCL 600.545.

ANSWER: No contest.

3. Plaintiff 53rd District Court (“District Court”) is the district court for the County of Livingston. Const 1963, Art 6, § 1; MCL 600.8124.

ANSWER: No contest.

4. Plaintiff Livingston County Probate Court (“Probate Court”) is the probate court for the County of Livingston. Const 1963, Art 6, § 15; MCL 600.803.

ANSWER: No contest.

5. On December 11, 2023, Defendants adopted their fiscal year 2024 budget (“FY 2024 Budget”). (Exhibit 1 – Livingston County FY 2024 Budget).

ANSWER: No contest.

6. The FY 2024 Budget fails to provide the constitutionally required minimum serviceable level of funding for Plaintiffs—while maintaining a general fund balance of over \$30M.

ANSWER: The Defendants plead no contest that the FY 2024 Budget projects a positive general fund balance. It is denied as untrue the FY 2024 Budget fails to provide the constitutionally required minimum level of funding for the Plaintiff courts.

7. Specifically, the FY 2024 Budget and the actions of Defendants have provided disparate treatment of Plaintiffs’ employees on the sole basis of the employees’ membership in a labor organization in violation of the Public Employment Relations Act (“PERA”), MCL 423.201 *et seq.*, by approving wage increases and reclassifications for all of Plaintiffs’ non-union employees while denying the same collectively bargained for wage increases and reclassifications for Plaintiffs’ union employees. (Exhibit 2 – Livingston County Courts and MAPE Collective Bargaining Agreement; Exhibit 3 – December 2023 Addendum to Collective Bargaining Agreement).

ANSWER: The allegations contained in paragraph 7 are denied as untrue. In further answer Defendants state that Plaintiffs' December 2023 Addendum to Collective Bargaining Agreement with MAPE was entered into notwithstanding that Plaintiffs' Chief Judge had actual notice and knowledge that the FY 2024 Budget approved by the Board did not include funding for the wage increases at issue. In further answer, Defendants state that the FY 2024 Budget included the same 3% wage increase negotiated and agreed to by all other County employee bargaining units.

8. Defendants' refusal to implement the wage increases and reclassifications for Plaintiffs' union employees has resulted in Plaintiffs' being threatened with litigation by the labor organization that represents its union employees—the Michigan Association of Public Employees ("MAPE")—for repudiation of Plaintiffs' collective bargaining agreement with MAPE, for unfair labor practices, violation of PERA, and violation of the Equal Protection Clauses of the Michigan and United States Constitutions. (Exhibit 4 – MAPE Demand Letter).

ANSWER: The allegations contained in paragraph 8 are denied as untrue. In further answer Defendants state that any action taken by MAPE against Plaintiffs is solely the result of Plaintiffs' unilateral decision to enter into a subsequent agreement to modify the collective bargaining agreement with the knowledge the Board did not agree to or approve the enhanced wage increases.

9. Plaintiffs have the inherent authority to bring this action to preserve the constitutional autonomy of the Livingston Courts to ensure they operate in compliance with the Michigan Constitution and state law

ANSWER: The allegations contained in paragraph 9 are denied as untrue. Pursuant to MCL 141.438(6) only the Chief Judge of the court is authorized to bring an action based on court funding.

10. Defendants' actions to appropriate funding that specifically preferences the Court's non-union employees while discriminating against the Court's union employees is an unlawful exercise of Defendants' appropriation authority, and Defendants lack the legal authority to exercise their appropriate authority in a manner that violates law.

ANSWER: The allegations contained in paragraph 10 are denied as untrue. In further answer the Defendants state that Plaintiffs, as the employer of court personnel, made the decision to authorize a wage increase to the court's non-union employees.

11. Accordingly, Defendants lack any discretion or authority to exercise their appropriation authority in a manner that violates the Michigan Constitution or state law.

ANSWER: While the Defendants plead no contest to the allegation that they are required to comply with applicable law and constitutional requirements, it is denied as untrue that any of the Defendants' actions have violated applicable state law or the Michigan Constitution.

12. Further, Defendants' FY 2024 Budget includes substantial cuts to the Livingston Courts' budget that threatens the serviceability of the Court by arbitrarily cutting approximately \$200,000 worth of funding in an arbitrary fashion from a substantial number of Plaintiffs' line items that preclude Plaintiffs from meeting their constitutionally and statutorily imposed mandated functions.

ANSWER: The allegations contained in paragraph 12 are denied as untrue.

13. The Honorable Michael P. Hatty, as chief judge for the 44th Circuit Court and 53rd District Court, has authorized the commencement of the instant action on behalf of the Circuit Court and District Court.

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. The Honorable Miriam Cavanagh, as chief judge of the Livingston County Probate Court, has authorized the commencement of the instant action on behalf of the Probate Court.

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

PARTIES, JURISDICTION, AND VENUE

15. Plaintiffs reincorporate all preceding paragraphs by reference.

ANSWER: The Defendants incorporate paragraphs 1 through 14 of their Answer.

16. Plaintiff 44th Circuit Court ("Circuit Court") is the circuit court for the County of Livingston. Const 1963, Art 6, § 11; MCL 600.545.

ANSWER: No contest.

17. Plaintiff 53rd District Court ("District Court") is the district court for the County of Livingston. Const 1963, Art 6, § 1; MCL 600.8124.

ANSWER: No contest.

18. Plaintiff Livingston County Probate Court ("Probate Court") is the probate court for the County of Livingston. Const 1963, Art 6, § 15; MCL 600.803.

ANSWER: No contest.

19. Defendant County of Livingston is a body corporate pursuant to Michigan law and the Michigan Constitution with the authority to sue or be sued. Const 1963, Art 7, § 1; MCL 45.3.

ANSWER: No contest.

20. Defendant Livingston County Board of Commissioners is the elected and organized body charged with carrying out the business of the County of Livingston. Const 1963, Art 7, § 8; MCL 46.3.

ANSWER: No contest.

21. Jurisdiction in the Michigan Court of Appeals is exclusive pursuant to MCL 141.438(10) as this action concerns a general appropriations act of the County. MCL 141.436(9); MCL 141.438(6).

ANSWER: The Defendants plead no contest that MCL 141.438 grants original and exclusive jurisdiction to the Michigan Court of Appeals of disputes between a court and a county legislative body "concerning a general appropriations act, including any challenge as to serviceable levels of funding." It is denied as untrue Plaintiffs have named the proper parties in this litigation.

22. Defendants adopted their FY 2024 Budget on December 11, 2023.

ANSWER: No contest.

23. The parties participated in mediation, which failed to resolve these issues, and this action is brought within 90 days of the adoption of the FY 2024 Budget. MCL 141.438(8).

ANSWER: No contest.

24. The Court of Appeals has exclusive and original jurisdiction to hear the claims raised in this action. MCL 141.438(10).

ANSWER: The Defendants plead no contest that MCL 141.438 grants original and exclusive jurisdiction to the Michigan Court of Appeals of disputes between a court and a county legislative body “concerning a general appropriations act, including any challenge as to serviceable levels of funding.” It is denied as untrue Plaintiffs have named the proper parties in this litigation.

FACTUAL ALLEGATIONS

A. Governing Provisions And The Parties’ Respective Roles

25. Plaintiffs reincorporate all preceding paragraphs by reference.

ANSWER: The Defendants incorporate paragraphs 1 through 24 of their Answer.

26. Defendants are the funding unit for Plaintiffs and must maintain the operations of the Livingston Courts. MCL 600.591; MCL 600.8104; MCL 600.837.

ANSWER: The Defendants plead no contest that the County is the funding unit of the Plaintiff courts, and the Board has been granted the legislative authority to appropriate the budget for the operation of the Plaintiff courts. The remaining allegations contained in paragraph 26 are denied as untrue.

27. The Michigan Constitution organizes the judicial branch of government into “one court of justice.” Const 1963, Art 6, § 1.

ANSWER: No contest.

28. The Michigan Supreme Court has vested exclusive administrative power over courts and courthouses in Chief Judges. MCR 8.110(C)(3).

ANSWER: The allegations contained in paragraph 28 are denied as untrue. In further answer the Defendants state that MCR 8.110(C)(1) requires the chief judge to “act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules.” In further answer, MCR 8.110(C)(3) lists the specific subjects over which the chief judge has administrative superintending power.

29. The Michigan Constitution further enshrines the separation of powers of government by establishing that “[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch.” Const 1963, Art 3, § 2.

ANSWER: Defendants acknowledge that Plaintiffs have accurately quoted a portion of Const 1963, art 3, § 2, and that the Michigan Constitution has adopted and included the separation of powers doctrine.

30. Accordingly, Plaintiffs, as members of the judicial branch of state government, have the administrative autonomy to manage their own affairs in determining how to best discharge their constitutional and statutory duties—within the limits prescribed by law.

ANSWER: The Defendants plead no contest that the Plaintiff courts have certain administrative autonomy to act within the limits prescribed by law, and as prescribed by the Supreme Court’s general superintending authority, including but not limited to AO 1998-5. In further answer the Defendants state that Plaintiffs’ administrative authority is also limited by the separation of powers doctrine on matters of funding and financing, as the County has primacy on funding matters as the legislative body responsible for appropriating funds.

31. As an inferior division of state government, counties only have the powers and immunities provided by the Legislature and lack a general grant of authority. Const 1963, Art 7, § 1.

ANSWER: Defendants plead no contest that Const 1963 art 7, § 1 provides that a county body corporate possesses the powers and immunities provided by law. The remaining allegations contained in paragraph 31 are denied as untrue.

32. Moreover, counties lack any grant of authority by the Legislature that would permit a county to exercise power and control over one of the principle branches of state government—the judicial branch. *See* Const 1963, Article 3, § 2.

ANSWER: The allegations contained in paragraph 32 are denied as untrue.

B. Wage Studies

33. In March 2022, Defendants engaged MGT of America Consulting, LLC (“MGT Consulting”) to conduct a wage study of all non-union employees working in the County, which included Plaintiffs’ non-union employees, to ensure that wages were competitive with current economic and market conditions. (Exhibit 5 – October 24, 2022 Livingston County Board of Commissioners Resolution).

ANSWER: The Defendants plead no contest that in March 2022 MGT Consulting was retained by the County to conduct a classification and compensation study for all non-union employees of the County and included the Plaintiff courts’ non-union employees in the study.

34. MGT Consulting completed its study in October 2022 and made recommendations for wage increases and position reclassifications for the County’s non-union employees, including, as relevant to this matter, Plaintiffs’ non-union employees.

ANSWER: No contest.

35. Defendants undertook the wage study to ensure that Defendants could “remain competitive and able to retain and recruit a talented workforce” and accordingly adopted a resolution to implement the wage study prepared by MGT Consulting for all County non-union employees and Plaintiffs’ non-union employees with an effective date of January 1, 2023. (Exhibit 6 – MGT Consulting October 2022 Non-union Wage Study)

ANSWER: No contest.

36. At the Board’s October 24, 2022 meeting, the Board unanimously adopted a resolution to approve and implement the results of the MGT non-union wage study effective January 1, 2023. Ex. 5.

ANSWER: The Defendants plead no contest that at the October 24, 2022 meeting the Board adopted a resolution to approve and implement the MGT Consulting recommendations with respect to non-union County employees. In further answer, the Defendants state only the judges of the Plaintiff courts had the authority to implement the recommendations for non-union court employees.

37. The approval and implementation of the MGT non-union wage study resulted in approximately a 5.06% increase to the County's payroll. Accordingly, the County's non-union employees and Plaintiffs' *non-union* employees received raises to their wages and some employees were reclassified into more senior positions on January 1, 2023, in accordance with the recommendations of MGT Consulting's non-union wage study effective January 1, 2023.

ANSWER: The allegations contained in paragraph 37 are denied as untrue. In further answer the Defendants state that some non-union County employees received wage increases and reclassifications consistent with the MGT Consulting study results but that none of the wage increases were the result of an across-the-board percentile increase. In further answer, the Defendants state only the judges of the Plaintiff courts had the authority to implement the recommendations for non-union court employees.

38. Also in late 2022, Plaintiffs and MAPE were engaged in negotiations on a new collective bargaining agreement, as the existing collective bargaining agreement between Plaintiffs and MAPE was set to expire on December 31, 2022.

ANSWER: No contest.

39. Unsurprisingly, during negotiations, the County's non-union wage study and its attendant raises were discussed during the negotiations between Plaintiffs, the County, and MAPE.

ANSWER: The Defendants plead no contest to the allegation that the MGT Consulting study was discussed during negotiations with MAPE. The Defendants are without knowledge or information sufficient to form a belief as to whether this was unsurprising.

40. County administration joined Plaintiffs' administrators in negotiating the proposed collective bargaining agreement with MAPE. Given that the County had just conducted and approved the implementation of a compensation and classification study that resulted in wage increases for its non-union employees and Plaintiffs' non-union employees, Plaintiffs, the County, and MAPE negotiated a similar provision into the collective bargaining agreement ("CBA") that called for a compensation study to be completed prior to August 1, 2023.

ANSWER: The Defendants plead no contest to the allegation representatives of the County administration attended the initial negotiating sessions with MAPE as observers and pleads no contest to the allegation that the parties tentatively agreed to conduct a Classification and Compensation study consistent with certain guidelines that were attached to the tentative agreement and further tentatively agreed to a reopener "solely and exclusively on the issue of a possible full or partial implementation of the Compensation study." The remaining allegations contained in paragraph 40 are denied as untrue.

41. Plaintiffs together with Defendants' Human Resources Department negotiated with MAPE and reached tentative agreement on a collective bargaining agreement to be effective from January 1, 2023 through December 31, 2025.

ANSWER: The Defendants plead no contest to the allegation that Plaintiffs reached a tentative agreement with MAPE. It is denied as untrue that any representative of the Defendants negotiated with or reached an agreement with MAPE, as Livingston County was not a party to the negotiations or the agreement.

42. This tentative agreement was brought before the Board at their January 30, 2023 meeting for ratification; instead, the Board moved to take no action and instead defer to Plaintiffs as the employer on the matter. (Exhibit 7 – January 30, 2023 Livingston County Board of Commissioners Meeting Minutes).

ANSWER: The Defendants plead no contest to the allegation that the tentative agreement was brought to the Board at the January 30, 2023 meeting. The remaining allegations contained in paragraph 42 are denied as untrue. In further answer the

Defendants state that the minutes of the January 20, 2023 meeting state: “Motion to not take action on Resolution 2023-01-014 and allow the employer, the courts, to work out an agreement with their union personnel under Supreme Court Order 1998-5.”

43. Further, the Board considered but ultimately withdrew motions to approve the compensation study provided for in Plaintiffs’ tentative collective bargaining agreement with MAPE and also considered a motion to reconsider their decision to take no action on the Court’s collective bargaining agreement, which failed. Ex. 8.

ANSWER: No contest.

44. Plaintiffs and MAPE entered into a collective bargaining agreement effective January 1, 2023 through December 31, 2025 (the “CBA”). Ex. 2.

ANSWER: No contest.

45. Of relevance to the instant dispute is Article 32(C) of the CBA. Article 32(C)(1) contains a “me too” provision that requires Plaintiffs to implement the same wage increases for the Court’s union employees that had been given to the Courts’ non-union employees.

ANSWER: The allegations contained in paragraph 45 are denied as untrue. In further answer the Defendants state that the collective bargaining agreement expressly limits the “me too” provision to “across the board” percentile wage increases.

46. In addition, Plaintiffs and MAPE’s prior collective bargaining agreement also contains a “me too” provision that requires Plaintiffs to implement the same wage increases for the Court’s union employees that are given to the Courts’ non-union employees. (Exhibit 8 – MAPE 2020-2022 CBA).

ANSWER: The allegations contained in paragraph 46 are denied as untrue. In further answer the Defendants state that the prior collective bargaining agreement contained a “me too” provision that required Plaintiff courts to implement “the same wage increases for the Court’s union employees that are given to the Courts’ non-

union employees” and expressly limited the “me too” provision to “across the board” percentile wage increases.

47. Article 32(C)(3) of the CBA also required Plaintiffs and MAPE to conduct a Classification and Compensation study. Ex. 2 at Article 32(C)(3).

ANSWER: No contest.

48. In compliance with Article 32(C)(3) of the CBA, Plaintiffs made the decision to engage MGT Consulting—the same firm that had conducted the County’s non-union wage study—to conduct a wage study of Plaintiffs’ union employees.

ANSWER: The Defendants plead no contest to the allegation that Plaintiff courts engaged MGT Consulting to conduct a wage study of the courts’ union employees. In further answer the Defendants state Plaintiffs unilaterally undertook this action with full knowledge that the Board did not pass the resolution seeking authorization to approve the compensation study.

49. Despite being aware of this requirement to conduct a wage study in the CBA and voicing no objection to it when the tentative CBA was put before Defendants for consideration, Defendants refused to appropriate funding to Plaintiffs to cover the \$22,800 cost of the MGT Consulting wage study, so Plaintiffs were forced to locate this sum within its existing budget to avoid repudiating the CBA.

ANSWER: The allegations contained in paragraph 49 are denied as untrue.

50. On September 22, 2023, MGT Consulting completed the Livingston Courts’ union wage study (hereinafter “Courts’ Union Wage Study”). (Exhibit 9 – MGT Consulting Livingston Courts Wage Study).

ANSWER: No contest.

51. Unsurprisingly, given that Plaintiffs had engaged the same vendor, MGT Consulting’s wage study for Plaintiffs’ union employees recommended wage increases and reclassifications consistent with the wage study that Defendants had adopted and implemented effective January 1, 2023. The Courts’ Union Wage Study indicated that full implementation would result in 5.02% increase to the Court’s payroll—a virtually identical increase to the 5.06% payroll that was the result of the implementation of the County’s non-union wage study.

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51.

52. Immediately after the completion of the Livingston courts' union wage study, on September 26, 2023, Plaintiffs engaged in a reopener of the CBA together with MAPE personnel and Defendants' Human Resources Director, Jennifer Palmbo, and the parties entered into a tentative agreement to amend the CBA to fully implement the Courts' Union Wage Study by way of a board resolution prepared for the County's Board Personnel Committee at their October 2, 2023 meeting.

ANSWER: The allegations contained in paragraph 52 are denied as untrue.

53. Plaintiffs agreed to the full implementation of its union wage study: to "remain competitive and recruit and retain a talented workforce" – the same general reason the County conducted its wage study. Moreover, Plaintiffs, as the employer, had no reasonable justification for refusing to agree to the full implementation of the wage study because Plaintiffs' non-union employees had already received the same raises.

ANSWER: The allegations contained in paragraph 53 are denied as untrue.

54. On September 29, 2023, Plaintiffs received notice that Board Personnel Committee Chair, Frank Sample, had removed discussion of the approval and implementation of the Courts' Union Wage Study from the Board Personnel Committee's agenda for its October 2, 2023 meeting and that the County would not consider the matter further. As a result of the substantial disparity in compensation that has been created between Plaintiffs' union and non-union employees, the morale of Plaintiffs' employees has suffered and employee turnover at the Livingston Courts has increased.

ANSWER: The Defendants plead no contest to the allegation that the item for approval and implementation of the courts' union wage study was removed from the Personnel Committee's agenda and was never approved by the Board. The remaining allegations contained in paragraph 54 are denied as untrue.

55. Upon information and belief, the FY 2024 Budget includes funding for implementation of Plaintiffs' union wage study but has these funds earmarked in a "contingency" that makes the funds unavailable to Plaintiffs without action or approval by the Board.

ANSWER: The Defendants plead no contest to the allegations contained in paragraph 55 and further states that such contingency items are in accord with the past and standard practices of the County related to the budget process.

56. Based on MAPE's demand letter, Plaintiffs anticipate that MAPE will imminently file an unfair labor practice charge against Plaintiffs with the Michigan Employment Relations Commission for violations of PERA based on Defendants refusal to implement the wage increases and reclassifications required by Courts' Union Wage Study. Ex. 4.

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56.

C. Budget Negotiations

57. Contemporaneous with the results of the Courts' Union Wage Study, Plaintiffs and the County were engaged in their annual budget discussions for fiscal year 2024. On August 7, 2023, Plaintiffs presented its proposed fiscal years 2024 and 2025 budget with an explanatory memorandum, which laid out the importance of the approval of the Courts' Union Wage Study, the effects of inflation, and the impacts of a number of interdepartmental charges. (Exhibit 10 – August 7, 2023 Court Budget Memorandum). On September 1, 2023, County administration reviewed Plaintiffs' proposed budget and requested that Plaintiffs' reduce their proposed budget request by \$126,000, which Plaintiffs complied with in an attempt to compromise in good faith and with the understanding that implementation of the Courts' Union Wage Study would be included within that budget.

ANSWER: The Defendants plead no contest to the allegations that Plaintiffs and the County were in discussions regarding the FY 2024 Budget, that Plaintiffs presented proposed budgets for fiscal years 2024 and 2025, and that County administration suggested reductions in the proposed budget. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 57.

58. On September 27, 2023, Plaintiffs were invited to present their proposed budget and annual report to the Board. During this nearly two-hour presentation, the Board raised no specific concerns and no objections were raised regarding Plaintiffs' requested budget for 2024.

ANSWER: No contest.

59. On October 16, 2023, County administration presented its proposed budget to the Board, which included additional cuts to Plaintiffs' proposed budget of \$37,220. Plaintiffs did not object to this total cut of \$163,220 from Plaintiffs' originally proposed budget in the spirit of cooperation given that County administration's proposed budget for the Courts included funding for the implementation of the Courts' Union Wage Study.

ANSWER: Defendants plead no contest to the allegation that the County administration presented its proposed budget to the Board on October 16, 2023 which included additional proposed reductions to the courts' budget. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 59.

60. On October 30, 2023, the Board's Finance and Asset Management Committee met to consider County administration's proposed budget.

ANSWER: No contest.

61. County administration contacted the Livingston Courts' administrators to invite them to attend the October 30, 2023 meeting and also requested that Chief Judge Michael P. Hatty attend the meeting, which would include discussion on the implementation of the Courts' Union Wage Study.

ANSWER: No contest.

62. At the suggestion of a County Commissioner, Chief Judge Hatty presented public comment detailing the reasons for implementing the Courts' Union Wage Study. The Committee refused to take any action on this request and **instead passed a motion to strike an additional \$200,000 from Plaintiffs' budget for fiscal year 2024.** (Exhibit 11 – October 30, 2023 Board FAM Committee Minutes) The decision to strike an additional \$200,000 from the Court's 2024 budget had never previously been discussed and there was little discussion at the October 30, 2023 about the rationale or reasons for such a cut. This additional \$200,000 cut from Plaintiffs' budget resulted in a total reduction of at least \$363,200 from the budget proposed by Plaintiffs for fiscal year 2024.

ANSWER: No contest.

63. Following the meeting, County administration contacted Plaintiffs to seek input on how and where Plaintiffs would cut an additional \$200,000 out of their budget.

ANSWER: No contest.

D. The Dispute

64. Since Plaintiffs had already seen their proposed budget cut by \$163,220, the additional \$200,000 cut compounded with the County's refusal to fund the Courts' Union Wage Study threatened the serviceability of the Courts for fiscal year 2024. Plaintiffs were forced to retain counsel.

ANSWER: The allegations contained in paragraph 64 are denied as untrue.

65. On November 9, 2023, Plaintiffs, through counsel, advised Defendants that the Livingston Courts could not suffer any further budget cuts and would not cooperate with the request, as the Courts had already agreed to cuts of \$163,220 from their presented budget and any further cuts would threaten Plaintiffs' serviceability. Further, the County had failed to allocate funding for Plaintiffs to implement the Courts' Union Wage Study, which would cause Plaintiffs to violate PERA and expose Plaintiffs to litigation from MAPE further rendering the Courts unserviceable. Plaintiffs demanded the County immediately act to approve implementation of the Courts' Union Wage Study, and threatened litigation if the County refused to comply.

ANSWER: The Defendants plead no contest that they received correspondence from Plaintiffs' counsel dated November 9, 2023 threatening litigation. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 65.

66. Defendants proceeded forward notwithstanding and adopted the FY 2024 Budget on December 11, 2023, which included approximately \$368,000 in total cuts from the budget proposed by Plaintiffs in August 2023. Further, the 2024 Budget failed to fund implementation of the Courts' Union Wage Study.

ANSWER: The Defendants plead no contest to the allegation that the FY 2024 Budget was adopted on December 11, 2024 and that the budget did not fund implementation of the courts' union employees wage study. The remaining allegations contained in paragraph 66 are denied as untrue.

67. On December 12, 2023, Plaintiffs gave notice to Defendants of a negotiating session with MAPE scheduled to occur on December 15, 2023 at 10:00AM in accordance with Michigan Supreme Court Administrative Order 1998-5.

ANSWER: No contest.

68. Following the negotiating session, Plaintiffs and MAPE entered into a Modification of Collective Bargaining Agreement to comply with Article 32(C)(3) of the CBA to provide for implementation of the wage study effective January 1, 2024 and adopt an amended Appendix A to the CBA as required by the CBA. Ex. 3.

ANSWER: It is denied as untrue that the Modification of Collective Bargaining Agreement was necessary to comply with Article 32(C)(3) of the CBA. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 68.

69. Following the execution of the CBA Addendum, Plaintiffs provided a copy of the same to the County and requested that the County's human resources department implement wage increases and position reclassifications for Plaintiffs' union employees as provided for in the Courts' Union Wage Study. To date, the County has refused to implement these changes.

ANSWER: The Defendants plead no contest to the allegation that Plaintiffs provided the County with a copy of the CBA Modification and demanded the County implement the results of the courts' wage study. The remaining allegations contained in paragraph 69 are denied as untrue. In further answer the Defendants state the County did not categorically refuse to implement Plaintiffs' demand to implement the wage increases; rather, the County requested Plaintiffs propose line-item budget transfers to fund the wage increases pursuant to AO 1998-5.

70. On January 19, 2024, MAPE sent a demand letter to the Court and the County threatening litigation for repudiation of the CBA, unfair labor practices, violation of Public Employment Relations Act ("PERA"), and a violation of the Equal Protection Clauses of the Michigan and United States Constitutions for Plaintiffs' failure to implement the Courts' Union Wage Study. Ex. 4.

ANSWER: No contest.

71. The Parties attended facilitative mediation on Tuesday, March 5, 2024 with the Hon. Peter D. Houk (ret.). The Parties were unable to reach a resolution of their disputes at mediation. (Exhibit 12 – Mediator Certification).

ANSWER: No contest.

72. Plaintiffs' employees are exclusively employed by the Livingston Courts; they are not co-employed by Defendants.

ANSWER: No contest.

73. Defendants' obligations with respect to Plaintiffs' employees are ministerial in nature, such as processing and administering payroll at the direction of Plaintiffs.

ANSWER: The allegations contained in paragraph 73 are denied as untrue. In further answer the Defendants state that budget decisions are discretionary legislative decisions entrusted solely to the legislative branch under the separation of powers doctrine.

74. Plaintiffs estimate that the cost of implementation of the union wage study to be approximately \$213,000 for fiscal year 2024, but this additional increase assumes 100% staffing of all existing court positions for the entirety of 2024.

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74.

75. Plaintiffs, as the employer of its union-represented employees and an autonomous governmental entity, possess intrinsic authority to implement salary increases in accordance with its collective bargaining agreement.

ANSWER: The allegations contained in paragraph 75 are denied as untrue. In further answer the Defendants state that under AO 1998-5 Plaintiffs have the authority to set salaries if reasonable and "within appropriations."

76. Plaintiffs are not required to obtain Defendants approval to issue salary raises to its employees, and any attempt by the County to restrict such autonomous fiscal decisions constitutes an infringement on Plaintiff's powers.

ANSWER: The allegations contained in paragraph 76 are denied as untrue.

77. As an inferior division of state government, counties only have the powers and immunities provided by the Legislature and lack a general grant of authority. Const 1963, Art 7, § 1.

ANSWER: No contest.

78. Moreover, counties lack any grant of authority by the Legislature that would permit a county to exercise power and control over one of the principle branches of state government—the judicial branch. See Const 1963, Article 3, § 2.

ANSWER: **The allegations contained in paragraph 78 are denied as untrue.**

79. State law, including MCL 600.591, requires Defendant Livingston County to fund trial courts within Livingston County.

ANSWER: **No contest.**

80. Defendants must fund trial courts within Livingston County at a serviceable level.

ANSWER: **No contest.**

81. Serviceable level of funding means funding sufficient to satisfy the legal mandates of the trial courts.

ANSWER: **The allegations contained in paragraph 81 are denied as untrue. In further answer the Defendants state that a serviceable level of funding is the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled, even if those functions are carried out “in a barely adequate manner.”**

82. Livingston Courts are the sole public employer of their staff.

ANSWER: **No contest.**

83. Plaintiffs, as a public employer, are mandated by law to bargain in good faith with its represented staff under Michigan’s Public Employment Relations Act, MCL 423.201 *et seq.*

ANSWER: **No contest.**

84. A failure to pay the wages required by a collective bargaining agreement is a repudiation of the agreement and an unfair labor practice. MCL 423.210; MCL 423.216.

ANSWER: **The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84.**

85. Defendants’ actions to give raises only to Plaintiffs’ non-union employees and subsequent refusal to give the same collectively bargained for raises to Plaintiffs’ union

employees through Defendants' refusal to implement the Courts' Union Wage Study constitutes *per se* discrimination and disparate treatment against Plaintiffs' union employees in violation of PERA. MCL 423.210(1)(c).

ANSWER: The allegations contained in paragraph 85 are denied as untrue. It is explicitly denied as untrue that Defendants gave raises to the court's non-union employees; as the employer of those individuals only Plaintiffs could give raises to those employees.

86. Defendants' actions are the sole and proximate cause for Plaintiffs' violations of PERA, and Defendants' failure to appropriate sufficient funds to permit Plaintiffs' to comply with their CBA renders the Courts unserviceable.

ANSWER: The allegations contained in paragraph 86 are denied as untrue.

87. Further, Defendants' refusal to appropriate the funds necessary to implement the Courts' Union Wage Study threatens Plaintiffs' serviceability as Plaintiffs' ability to hire and retain qualified court personnel is severely hindered.

ANSWER: The allegations contained in paragraph 87 are denied as untrue.

88. For the avoidance of doubt, Defendants' actions have created a situation where Plaintiffs' employees are subjected to a work environment where colleagues—working in the same positions—receive disparate wages based solely on whether he or she belongs to a labor organization and despite the fact that Plaintiffs' union employees have collectively bargained for these wage increases.

ANSWER: The allegations contained in paragraph 88 are denied as untrue.

89. Plaintiffs have the inherent authority to compel Defendants to provide a serviceable level of funding. *See generally 46th Circuit Trial Court v Cty of Crawford*, 476 Mich 131 (2006); *see also* MCL 141.436(9).

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the legal assertions contained in paragraph 89. In further answer it is denied as untrue the Defendants have failed to provide a serviceable level of funding.

90. Defendants' refusal to fund the Courts' Union Wage Study has "create[d] an emergency immediately threatening the existence" of the Courts. *46th Circuit Trial Court*, 476 Mich at 124.

ANSWER: The allegations contained in paragraph 90 are denied as untrue.

91. Plaintiffs' request of approximately \$213,000 to implement the union wage study is both "reasonable and necessary." *Id.* at 145.

ANSWER: The allegations contained in paragraph 91 are denied as untrue.

92. As a result of uncompetitive wages, since 2020, Plaintiffs have experienced a substantial amount of staff turnover.

ANSWER: The allegations contained in paragraph 92 are denied as untrue.

93. Plaintiffs' "morale problems [have] specifically manifested themselves in the court's inability to hire and retain [employees.]" *Id.* at 152.

ANSWER: The allegations contained in paragraph 93 are denied as untrue.

94. Thus, Plaintiffs' continued operations are in jeopardy because the lack of funding by Defendants has caused declining employee morale, which has "demonstrably caused court employees to be unable to carry out their constitutional responsibilities." *Id.*

ANSWER: The allegations contained in paragraph 94 are denied as untrue.

95. In addition, Defendants' FY 2024 Budget includes substantial cuts to Plaintiffs' budget that threatens the serviceability of the Courts as Defendants arbitrarily cut approximately \$368,000 worth of funding from Plaintiffs' line items.

ANSWER: The allegations contained in paragraph 95 are denied as untrue.

96. These haphazard cuts preclude Plaintiffs from meeting their constitutionally and statutorily mandated duties.

ANSWER: The allegations contained in paragraph 96 are denied as untrue.

97. These cuts come directly from the Courts' core services, which will put in jeopardy the overall operation of the court. *Employees & Judges of Second Judicial Dist Court, Second Div v Hillsdale Cty*, 423 Mich 705, 717-22 (1985).

ANSWER: The allegations contained in paragraph 97 are denied as untrue.

98. Absent additional funding, Plaintiffs will be unable to meet mandated functions for these reasons detailed by Court Financial Officer Heather McCray-Germain. (Exhibit 13 – Affidavit of Heather McCray-Germain)

ANSWER: The allegations contained in paragraph 98 are denied as untrue. In further answer the Defendants state that the affidavit of Heather McCray-Germain does not contain any actual factual explanation of why the Plaintiff courts will allegedly be unable to meet their mandated functions but instead contains a series of conclusory assertions and broad generalizations.

99. In addition to cutting appropriations for statutorily mandated expenses, as a result of these line-item budget cuts, “the productivity of court employees” will be “diminished to such an extent that the court[s] cannot carry out [their] constitutional responsibilities.” *46th Circuit Trial Court*, 476 Mich at 152.

ANSWER: The allegations contained in paragraph 99 are denied as untrue.

**FIRST CAUSE OF ACTION
DECLARATORY RELIEF**

100. Plaintiffs reincorporate all preceding paragraphs by reference.

ANSWER: The Defendants incorporate paragraphs 1 through 99 of their Answer.

101. An actual controversy exists between Plaintiffs and Defendants concerning the serviceability of the FY 2024 Budget.

ANSWER: The allegations contained in paragraph 101 are denied as untrue. In further answer the Defendants state that Plaintiffs have more than sufficient budgeted funds to continue to operate at or above a serviceable level.

102. An actual controversy exists between Plaintiffs and Defendants concerning implementation of the Courts’ Union Wage Study.

ANSWER: The allegations contained in paragraph 102 are denied as untrue. In further answer the Defendants state that Plaintiffs have more than sufficient budgeted

funds to continue to operate at or above a serviceable level while implementing the wage study if Plaintiffs chose to do so.

103. Plaintiffs request that this Honorable Court enter a declaratory judgment in favor of Plaintiffs and against all Defendants in accordance with MCR 2.605 that: (1) Orders Defendants to immediately implement the Courts' Union Wage Study; (2) Orders Defendants to appropriate such additional funds to Plaintiffs' budget as may be needed to fund the implementation of the Courts' Union Wage Study; and (3) Orders Defendants to appropriate such additional funds to Plaintiffs' budget in an amount to be determined to ensure the serviceability of the Livingston Courts.

ANSWER: The Defendants deny that Plaintiffs are entitled to the relief requested in paragraph 103.

SECOND CAUSE OF ACTION INJUNCTIVE RELIEF

104. Plaintiffs reincorporate all preceding paragraphs by reference.

ANSWER: The Defendants incorporate paragraphs 1 through 103 of their Answer.

105. Plaintiffs seeks injunctive relief to enjoin Defendants from taking any further actions to interfere with Plaintiffs' autonomy and authority as a co-equal branch of state government.

ANSWER: It is denied as untrue the Defendants have taken any actions to interfere with Plaintiffs' autonomy and authority as a co-equal branch of state government and deny that Plaintiffs are entitled to injunctive relief.

106. Defendants' actions violate constitutional separation of powers because Defendants, by their words and actions, repeatedly and unlawfully seek to exercise control over the judicial branch of state government.

ANSWER: The allegations contained in paragraph 106 are denied as untrue.

107. Defendants' role as the local funding unit for the Livingston Courts does not grant Defendants any lawful authority to dictate court operations or interfere with court administration or personnel matters.

ANSWER: It is denied as untrue the Defendants have, or seek to, dictate court operations or interfere with court administration or personnel matters; therefore, the allegations contained in paragraph 107 are denied as untrue.

108. Moreover, Defendants have a general fund balance of over \$30M after taking into account all expenditures for FY 2024, so Defendants have the financial ability to pay to provide a serviceable budget to Plaintiffs but are refusing to do so in an attempt to unlawfully assert control over the judiciary. *See* MCL 141.436(9) (“The court hearing a [serviceability] suit shall consider the financial ability of the county to pay when considering any challenge as to serviceable levels of funding.”).

ANSWER: The Defendants plead no contest that based on current projections the County is projected to have a general fund balance of over \$30 million after accounting for all expenditures for FY 2024. However, it is denied as untrue the Defendants have not appropriated sufficient funds for Plaintiff courts to function at a serviceable level. In further answer a budget surplus (positive fund balance) is a requirement of state law.

109. As an entity of the Judicial Branch of the State of Michigan’s one court of justice, the Plaintiffs have a constitutional right to the separation of powers guaranteed by Article 3, Section 2 of the State Constitution.

ANSWER: The Defendants do not dispute the legal assertions contained in paragraph 109.

110. Even the “temporary loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by and action at law.” *Garner v Mich State Univ*, 185 Mich App 750, 764 (1990).

ANSWER: The Defendants are without knowledge or information sufficient to form a belief as to the truth of the legal assertions contained in paragraph 110.

111. Defendants’ unlawful and unconstitutional actions are “a noncompensable injury for which there is no legal measurement of damages.” *Thermatool Corp v Borzym*, 227 Mich App 366, 377 (1998).

ANSWER: It is denied as untrue the Defendants have engaged in any unlawful or unconstitutional actions; therefore, the allegations contained in paragraph 111 are denied as untrue.

112. Defendants' failure to fund the Courts' Union Wage Study and refusal to provide serviceable funding to Plaintiffs will severely impair the administration of justice in Livingston County and will harm law enforcement operations throughout the County—putting the safety, welfare, and access to justice of the general public at risk.

ANSWER: It is denied as untrue the Defendants have refused to provide serviceable funding to the Plaintiff courts; therefore, the allegations contained in paragraph 112 are denied as untrue.

THIRD CAUSE OF ACTION ACTION FOR MANDAMUS

113. Plaintiffs reincorporate all preceding paragraphs by reference.

ANSWER: The Defendants incorporate paragraphs 1 through 112 of their Answer.

114. Plaintiffs have a clear, legal right as the sole employer of their employees to make personnel decisions.

ANSWER: While the Defendants plead no contest that as a general proposition the Plaintiffs are the sole employer of court employees and have the authority to make personnel decisions, it is denied as untrue the Plaintiffs have the authority to make personnel decisions that are not within a budget appropriation or that fail to comply with AO 1998-5.

115. Plaintiffs have a clear, legal right to a serviceable level of funding.

ANSWER: While the Defendants plead no contest that Michigan courts are entitled to a serviceable level of funding, it is denied as untrue the Plaintiffs have not been provided with a serviceable level of funding.

116. Plaintiffs have a clear, legal right to administer their own courthouse operations and staff, free from fear of Defendants' interference.

ANSWER: While the Defendants plead no contest that Michigan courts are entitled to administer their own courthouse operations without unauthorized interference from a funding unit, it is denied as untrue the Plaintiffs have not been able to administer their own courthouse operations. It is further denied as untrue the Defendants have interfered with Plaintiffs' ability to administer their courthouse operations.

117. Defendants have no discretion regarding their legal mandates to provide a serviceable level of funding to Plaintiffs and to ensure compliance with state law.

ANSWER: It is denied as untrue that the Defendants have not provided a serviceable level of funding to Plaintiffs; therefore the allegations contained in paragraph 117 are denied as untrue.

118. There is a "ministerial duty to obey the Michigan and US Constitutions" *Adams v Parole Bd*, 340 Mich App 251, 262 (2022).

ANSWER: While the Defendants do not dispute that as a general proposition governmental agencies and officials are required to obey the United States and Michigan constitutional mandates, it is denied as untrue the Defendants have failed to obey the Michigan or United States Constitution; therefore the allegations contained in paragraph 118 are denied as untrue.

119. Defendants have a clear, legal duty to comply with state law, including PERA.

ANSWER: While Defendants do not dispute the general proposition that they are required to comply with state law, it is denied as untrue the Defendants have failed to comply with state law. It is explicitly denied as untrue the Defendants have failed to

comply with PERA as the Defendants are not the employer of Plaintiffs' employees.

Therefore the allegations contained in paragraph 119 are denied as untrue.

120. Plaintiffs have no alternative financial means or legal remedy to secure serviceable funding.

ANSWER: The Defendants deny as untrue that they have not provided a serviceable level of funding to Plaintiffs; therefore the allegations contained in paragraph 120 are denied as untrue.

RELIEF REQUESTED

The Defendants respectfully request the Court deny Plaintiffs all relief, dismiss the Plaintiffs' Complaint with prejudice and enter judgment in favor of the Defendants.

Respectfully submitted,

DATED: April 1, 2024

PLUNKETT COONEY

BY: /s/Michael S. Bogren

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AFFIRMATIVE DEFENSES

The Defendants assert the following affirmative defenses to the Plaintiffs' claims:

1. Plaintiffs' claims are barred in whole or in part by the separation of powers doctrine.

2. Plaintiffs' claims are barred in whole or in part by the Plaintiffs' failure to comply SCAO 1998-5.

3. Plaintiffs' demand for additional budget allocations to implement reclassifications and wage enhancements is not reasonable or necessary.

4. Plaintiff courts are operating at a serviceable level with the current budget appropriations.

5. Neither the named Plaintiff nor the named Defendants are proper parties in this action.

6. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

7. Plaintiffs' complaint fails to allege facts demonstrating entitlement to a writ of mandamus.

8. Plaintiffs' complaint fails to allege facts demonstrating entitlement to injunctive relief.

9. The separation of powers doctrine prohibits the judicial branch from requiring the legislative branch to appropriate or allocate funds in excess of the funds required to provide for operation of the courts at a serviceable level.

10. Plaintiffs have failed to identify any specific constitutional or statutory duty that cannot be fulfilled at a minimally serviceable level under the 2024 Budget approved by the Board.

11. Plaintiffs have failed to identify any emergency situation immediately threatening the existence or ability to perform a mandated function of the courts.

12. Defendants have appropriated and allocated to Plaintiffs funds that allow the courts to operate at a serviceable level.

13. Defendants do not have a clear legal duty to increase the amount of funds appropriated or allocated for the courts in the FY 2024 Budget.

14. Defendants did not agree to the proposed implementation of the multi-year commitment for reclassification or wage increases to Plaintiffs' union employees implemented by Plaintiffs' unilateral decision to enter into a letter of understanding with MAPE, and the agreement concerns a personnel economic issue which exceeds the percentage increase of the multi-year collective bargaining agreements that Defendants have negotiated for its union employees.

15. To the extent Plaintiffs are threatened with, or the subject of, a claim for violating PERA, that situation is purely self-inflicted and since Defendants are not the employers of the courts' employees Defendants can have no liability arising out of a PERA claim asserted against Plaintiffs.

16. Plaintiffs have the authority to make budget transfers, staffing level adjustments, and other mechanisms to implement the pay increases they seek from the amount approved by the Board in the FY 2024 Budget, but Plaintiffs have refused to take any such action.

17. Plaintiffs' demand for relief violates the separation of powers doctrine as it would violate the County's legislative authority to appropriate, allocate, and expend funds.

18. To the extent the wage increases would have to be funded beyond the amount approved by the Board in the FY 2024 Budget, Plaintiffs acted beyond the scope of their authority when they agreed with MAPE to implement the wage increases without prior approval of the County.

19. Plaintiffs' actions are contrary to the Uniform Budgeting and Accounting Act, and SCAO 1998-5.

20. One or more of Plaintiffs' claims may be barred by the parole evidence rule.

21. Plaintiffs' demand for injunctive relief is barred by the doctrine of unclean hands, as the issues Plaintiffs complain of are self-created.

22. Defendants will move to amend their affirmative defenses if additional defenses are discovered.

Respectfully submitted,

DATED: April 1, 2024

PLUNKETT COONEY

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