

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM NO. 11
CAUSE NO. 49D11-1310-PL-038001

TAMMY RAAB,)
on behalf of herself and all others similarly)
situated,)

Plaintiff,)

v.)

KENT W. ABERNATHY, in his official capacity)
as Commissioner of the Indiana Bureau of)
Motor Vehicles, and the INDIANA BUREAU)
OF MOTOR VEHICLES,)

Defendants.)

FILED
MAR 21 2016
Myla A. Eldredge
CLERK OF THE MARION CIRCUIT COURT

**DEFENDANTS' AMENDED ANSWER AND COUNTERCLAIM TO
PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT**

Defendants, Kent W. Abernathy ("Abernathy"), in his official Capacity as Commissioner of The Indiana Bureau of Motor Vehicles, and The Indiana Bureau of Motor Vehicles (the "BMV") (collectively, the "Defendants"), by counsel, for their Answer to Plaintiff's First Amended Complaint ("Complaint"), together with Separate Defenses and Counterclaim, state as follows:

I. ANSWER

1. This is a class action on behalf of a proposed class, defined below, of persons and entities who have paid various mandatory fees collected by the BMV for the registration of motor vehicles, and for other licenses and services provided or required by the BMV. By the BMV's own admission, Hoosiers have been systematically paying excessive amounts for these fees for years.

ANSWER: Defendants state that the allegations in Paragraph 1 are contained in an introductory “summary of claims,” which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are “mandatory” or “required,” as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See e.g., Hazelwood v. State*, 3 N.E.3d 39; 40 (Ind. Ct. App. Feb. 5, 2014) (“driving is a privilege and not a right”).

2. All of the charges that may be imposed by the BMV for various items and services are set forth in statutes and Public Laws adopted by the Indiana General Assembly, and administrative rules promulgated by the BMV. These public laws, statutes and administrative rules identify all of the component charges that may be included in fees charged by the BMV, and no law, regulation or other authority allows the BMV to charge higher fees for any reason.

ANSWER: Defendants state that the allegations in Paragraph 2 are contained in an introductory “summary of claims,” which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. To the extent a response is required, Defendants admit that certain statutes and administrative rules bear on the fees charged by the BMV and state that those statutes and administrative rules speak for themselves. Defendants deny any other allegations.

3. However, the BMV recently admitted publicly that for many years it has charged fees that exceed the charges authorized by law for various items and services, as set forth in an

official press release by the BMV, and as documented in an amended fee schedule recently published by the BMV. These fee overcharges have affected millions of transactions and forced Hoosiers to pay millions of dollars more than they are lawfully required to pay in order to obtain items that are required by law to operate motor vehicles.

ANSWER: Defendants state that the allegations in Paragraph 3 are contained in an introductory “summary of claims,” which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. Defendants further state that any documents referred to speak for themselves. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are “mandatory” or “required,” as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See e.g., Hazelwood v. State*, 3 N.E.3d 39, 40 (Ind. Ct. App. Feb. 5, 2014) (“driving is a privilege and not a right”). To the extent further response is required, Defendants deny any other allegations.

4. Imposing fees in amounts that exceed the legal authority granted to the BMV for such charges is unlawful, and the receipt, retention and use of such funds by the BMV is unjust to every person, business or other entity that paid them. Although the BMV has offered to issue a credit to those customers who happen to do further business with the Bureau, it has not arranged to return any of the cash illegally collected, nor has it agreed to pay customers’ interest for using that money, and has made no form of payment available to persons out of state or who no longer use the services of the BMV. In addition, the BMV has failed to provide any accounting of the amount and duration of the recently-acknowledged overcharges. The BMV’s

narrowly limited attempt to correct years of excessive fees is not an adequate remedy for the millions of persons subject to the unlawful charges.

ANSWER: Defendants state that the allegations in Paragraph 4 are contained in an introductory “summary of claims,” which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. To the extent further response is required, Defendants admit that the BMV has provided, and will continue to provide, credits to certain customers of the BMV and deny any other allegations.

5. This action seeks to provide a complete and just remedy for the BMV’s unlawful practices, by requiring the BMV to immediately disgorge the millions of dollars in illegal fees collected, with accrued interest, to all of the persons, companies and other entities who paid them; by requiring the BMV to provide a thorough accounting of the identity, amount and duration of the overcharges recently disclosed by the Bureau; and by enjoining the BMV from charging fees in the future that exceed the amounts allowed by law.

ANSWER: Defendants state that the allegations in Paragraph 5 are contained in an introductory “summary of claims,” which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. To the extent further response is required, Defendants deny the allegations.

6. This action also seeks to compel the BMV to honor the statutorily-enacted public policy of the State of Indiana:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as

public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.

IND. CODE §5-14-3-1 (emphasis added). In response to the BMV's public announcement that it had long been collecting "overcharges on a number of fees," and was reducing nearly 30 types of fees, counsel for the Plaintiff requested public records from the BMV, pursuant to IND. CODE §5-14-3, related to the discovery, analysis and amount of the admitted overcharges. The BMV denied the public records request in full, and refused to produce a single document related to the admitted overcharges.

ANSWER: Defendants state that the allegations in Paragraph 6 are contained in an introductory "summary of claims," which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. Defendants further state that any documents referred to speak for themselves. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the actions of Plaintiff's counsel and deny any other allegations.

7. The BMV should not be allowed to operate behind closed doors, avoid scrutiny and accountability, and demand the blind trust of Indiana citizens, particularly with respect to the identification, duration and purported correction of dozens of unlawful fees that have been paid by millions of Hoosiers. Like any other state agency, the BMV must provide "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials." This action therefore seeks an expedited order directing the BMV to produce the public records requested by counsel for the Plaintiff.

ANSWER: Defendants state that the allegations in Paragraph 7 are contained in an introductory "summary of claims," which consists of characterization rather than allegations of specific fact, and therefore no response is required. Defendants further state that the allegations contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

8. Plaintiff, Tammy Raab, is a resident of Marion County, Indiana, and has paid one or more of the excessive fees recently disclosed by the Bureau.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 regarding where Plaintiff resides. Defendants deny the remaining allegations.

9. Defendant Kent A. Schroder is the interim Commissioner of the Indiana Bureau of Motor Vehicles, a public officer and state official, and is the successor in office to R. Scott Waddell, the Commissioner of the Indiana Bureau of Motor Vehicles at the time this action was initially filed.

ANSWER: Defendants deny that Kent Schroder is the Commissioner of the BMV, admit that he was the successor in office to R. Scott Waddell at the time this action was filed, and deny any remaining allegations.

10. Defendant Indiana Bureau of Motor Vehicles is the state agency responsible for issuing Indiana motor vehicle registrations and titles, license plates, operator's licenses, and personal identification cards, and charging and collecting the fee for those items in the amount permitted by law.

ANSWER: Defendants admit that the allegations in Paragraph 10 of the Complaint accurately describe some of the responsibilities of the BMV and deny any remaining allegations.

11. The authority of a state agency to act is limited to that which is granted to it by statute. And, even where the legislature has directed an administrative agency to perform a particular function, it must do so in compliance with the Indiana Administrative Rules and Procedures Act (“ARPA”). IND. CODE § 4-22-2 *et seq.* These limitations and requirements apply to the BMV in its function of charging fees for various items and services. *See, e.g., Villegas v. Silverman*, 832 N.E.2d 598, 610 (Ind. Ct. App. 2005), *trans, dismissed* (2006) (“The duty of the BMV to issue licenses in a manner that it deems prudent does not supersede the mandate to allow the public to participate in the rule-making process.”).

ANSWER: Defendants state that the allegations in Paragraph 11 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

12. The mandatory fees charged by the BMV for the issuance of licenses, registrations and other items are agency statements of general applicability that (i) have or are designed to have the effect of law, and (ii) implement, interpret, or prescribe: (A) law or policy, or (B) the organization, procedure, or practice requirements of an agency, and therefore are “rules” as defined by the ARPA. IND. CODE § 4-22-2-3(b).

ANSWER: Defendants state that the allegations in Paragraph 12 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are “mandatory” or “required,” as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See, e.g., Hazelwood v. State*, 3 N.E.3d 39, 40 (Ind. Ct. App. Feb. 5, 2014) (“driving is a privilege and not a right”).

13. The mandatory fees charged by the BMV for the issuance of licenses, registrations and other items are agency statements of general applicability, were applied prospectively, were applied as though they had the effect of law, and affected the substantive rights of the persons and entities that paid them.

ANSWER: Defendants state that the allegations in Paragraph 13 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are “mandatory” or “required,” as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See e.g., Hazelwood v. State*, 3 N.E.3d 39, 40 (Ind. Ct. App. Feb. 5, 2014) (“driving is a privilege and not a right”).

14. The mandatory fees charged by the BMV for the issuance of licenses, registrations and other items are not resolutions or directives of an agency that relate solely to internal policy, internal agency organization, or internal procedures.

ANSWER: Defendants state that the allegations in Paragraph 14 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are “mandatory” or “required,” as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See e.g., Hazelwood v. State*, 3 N.E.3d 39, 40 (Ind. Ct. App. Feb. 5, 2014) (“driving is a privilege and not a right”).

15. Therefore, in order to be lawful, all of the mandatory fees charged by the BMV for licenses, registrations and other items must either be (i) directly authorized by statute or

Public Law, or (ii) the subject of a rule authorized by statute and adopted in accordance with the rulemaking procedures set forth in the ARPA, including notice, a public hearing, formal adoption, Attorney General approval, executive approval, and filing with the Secretary of State. IND. CODE § 4-22-2-23 *et seq.* Stated another way, the BMV has no discretion or other authority to impose and collect fees for licenses, registrations and other items other than those fees expressly provided by Indiana law.

ANSWER: Defendants state that the allegations in Paragraph 15 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are “mandatory” or “required,” as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See e.g., Hazelwood v. State*, 3 N.E.3d 39, 40 (Ind. Ct. App. Feb. 5, 2014) (“driving is a privilege and not a right”).

16. On March 7, 2013, the Plaintiff filed a previous class action against the Defendants to recover unlawful fees collected from persons who paid the BMV for basic operator’s licenses while less than 75 years of age. In response to that case, *Raab v. Waddell and Indiana Bureau of Motor Vehicles*, Marion Superior Court, Cause No. 49D12-1303-PL-008769 (the “First Case”), the BMV admitted that it had been overcharging for operators’ licenses since at least 2007, and lowered the fee for such licenses.

ANSWER: Defendants admit that on March 7, 2013, Plaintiff filed a class action against Defendants. Defendants state that the case was resolved and that the records of that proceeding speak for themselves. Defendants deny any remaining allegations.

17. The BMV subsequently agreed to a settlement in the First Case, under which the BMV will pay \$30 million to the plaintiff class, and under which refunds will be available immediately in the form of cash as well as credits, to both in-state and out-of-state claimants. Prior to the First Case, the BMV did not disclose that it was overcharging for operator's licenses, did not offer any payment or credit to those persons who were overcharged, and did not reduce the fee collected for operator's licenses.

ANSWER: Defendants admit that on March 7, 2013, Plaintiff filed a class action against Defendants. Defendants state that the case was resolved and that the records of that proceeding speak for themselves. Defendants deny any remaining allegations.

18. On September 27, 2013, the BMV issued a Press Release announcing that for many years the agency has been charging several more unlawful fees that exceed the amounts authorized by Indiana law, *for various items in addition to the operator's licenses* that are the subject of the First Case. The BMV's disclosure failed to identify the specific fees affected, the amount of overcharges, or the time frame of the unauthorized fees. The Press Release stated:

BMV to Lower Fees on Various BMV Transactions Effective Immediately

INDIANAPOLIS- The Indiana Bureau of Motor Vehicles (BMV) announced today that it is lowering a number of fees following an independent review of its fee structure.

"Upon being informed of potential errors in administering fees, Governor Pence directed the BMV to conduct an independent review of the more than 300 fees the BMV administers," said BMV Commissioner, R. Scott Waddell. "That review showed just how complex the statutes that govern fees are, and we found several errors that have led to both undercharges and overcharges on a number of fees. The BMV has taken immediate steps to address any overcharges by crediting affected motorists' accounts and has corrected all overcharged fees going forward."

Barnes and Thornburg, an Indianapolis-based law firm, conducted the review of the Indiana Code that governs the fees the BMV administers. The review found that a number of fees are governed by multiple statutes. In order to simplify the administration of fees and better serve the driving public, the BMV and the

Governor's office will work with the General Assembly to address this complicated statutory system and eliminate future confusion.

For a complete list of fees, please visit the official website at [ww.mvbm.com](http://www.mvbm.com).

See, http://www.in.gov/bmv/files/Lower_Fees_Press_Release.pdf (visited October 3, 2013). A copy of the September 27, 2013 Press Release is attached hereto and marked Exhibit A (the "Press Release"), and is incorporated herein by reference.

ANSWER: Defendants admit that the BMV issued a press release on or about September 27, 2013, and state that such press release speaks for itself. Defendants deny any remaining allegations in Paragraph 18 of the Complaint.

15.¹ Prior to September 27, 2013, the BMV published and used a fee chart that stated the fees charged by the agency for various items and services. A copy of the fee chart with an effective date of June 28, 2013 is attached hereto and marked Exhibit B (hereafter the "Old Fee Chart"), and is incorporated herein by reference.

ANSWER: Defendants admit that the BMV has published and used many fee charts and state that those documents speak for themselves. Defendants deny any remaining allegations.

16. On September 27, 2013, the BMV published and began using an updated fee chart that stated the fees charged by the agency for various items and services after the corrections announced in the Press Release. A copy of the amended fee chart with an effective date of September 27, 2013 is attached hereto and marked Exhibit C (hereafter the "New Fee Chart"), and is incorporated herein by reference.

ANSWER: Defendants admit that the BMV has published and used many fee charts and state that those documents speak for themselves. Defendants deny any remaining allegations.

¹ Plaintiff's numbered paragraphs in the Complaint are incorrect and resume at number 15 rather than proceeding to number 19. To avoid confusion, Defendants will follow the numbering in the Complaint.

17. A comparison of the Old Fee Chart and the New Fee Chart reveals specifically those fees that the BMV has reduced as of September 27, 2013 in order to correct the announced overcharges, as well as the amount for each such fee that the BMV has admitted it was overcharging.

ANSWER: Defendants admit that what Plaintiff identifies as the New Fee Chart reflects reductions in certain fees, and deny all remaining allegations in Paragraph 17 of the Complaint.

18. The fees that the BMV has admitted overcharging according to a comparison of the Old Fee Chart and the New Fee Chart (hereafter referred to as the "Inflated Fees") are set forth in the following table:

TABLE I	
FEE NAME/CATEGORY	OVERCHARGE
Operator's License Motorcycle Endorsement (Under 75, 6 years)	\$3.00
Operator's License Motorcycle Endorsement (Under 75, 5 years)	\$0.50
CDL - Upgrade	\$1.00
Amend/Replace CDL License	\$4.50
Duplicate Motor Vehicle Title	\$1.00
Registration History Records Request	\$4.00
Chauffer's License (Under 75, 6 years)	\$4.50
Motorcycle Endorsement on Chauffer's License (Under 75, 6 years)	\$3.00
Motorcycle Endorsement on Public Passenger Chauffer's License (4 years)	\$1.50
ID Card (Not for individuals eligible to vote before next election)	\$1.50
Special ID Card (For those 65 years old or older, and those who are disabled)	\$1.00
Plate Transfer	\$1.00

Personalized Plate	\$3.00
Special Machinery Registration	\$5.75
Antique Year of Manufacture Registration	\$11.00
Semi-Trailer Registration	\$1.00
New Passenger Registration	\$0.70
New Motorcycle Registration	\$0.70
New Recreational Vehicle Registration	\$1.00
New Antique Passenger and Motorcycle Registration	\$1.00
New Antique Truck Registration	\$1.00
New Recovery Vehicle Registration (category, scaled by weight and date issued)	\$1.00
New Semi-Trailer Five-Year Cycle Registration (category, scaled by weight and date issued)	\$1.00
New Semi-Trailer Permanent Registration	\$1.00
New Truck Registration (category, scaled by weight and date issued)	\$1.00
New Trailer Registration (category, scaled by weight and date issued)	\$1.00
New Tractor Registration (category, scaled by weight and date issued)	\$1.00
New Bus Registration (category, scaled by weight and date issued)	\$1.00
New Other Buses Registration (category, scaled by weight and date issued)	\$1.00

ANSWER: Defendants deny the allegations in Paragraph 18 of the Complaint.

19. Each of the Inflated Fees exceeds the sum of those charges for the underlying item or service that are (i) directly authorized by statute or Public Law, or (ii) the subject of a rule authorized by statute and adopted in accordance with the rulemaking procedures set forth in the ARPA. The Inflated Fees therefore exceed the legal authority granted to the BMV for such charges and are unlawful.

ANSWER: Defendants state that the allegations in Paragraph 19 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

20. Although it is possible to identify the Inflated Fees as set forth above by comparing the Old Fee Chart and the New Fee Chart, the BMV has not identified publicly the amount by which the Inflated Fees were excessive or the time period during which they were charged. Nor has the BMV stated the basis on which it has determined that the old fees were excessive, or the basis for its determination that the new fees are actually correct. Instead, the BMV has taken a "just trust us" approach.

ANSWER: Defendants state that the allegations in Paragraph 20 consist of characterization rather than allegations of specific fact, and therefore no response is required. To the extent response is required, Defendants deny the allegations.

21. The BMV has refused to make the "independent review of its fee structure" identified in the September 27, 2013 Press Release available to the public. According to a September 28, 2013 article in The Indianapolis Star, BMV spokesperson Josh Gillespie declined to produce the review to the newspaper on the grounds that it was protected by attorney-client privilege. See, "Indiana BMV Admits It Overcharged On More Fees, Will Issue Credits," <http://www.indvstar.com/article/20130927/NEWS05/309270058> (visited September 30, 2013), a copy of which is attached hereto and marked Exhibit D, and incorporated herein by reference. It is therefore impossible for any person or entity to know if the fees on the New Fee Chart are in the correct amount, or if any credit made available by the BMV is in the correct amount.

ANSWER: Defendants state that the allegations in Paragraph 21 consist of characterization and hearsay rather than allegations of specific fact, and therefore no response is

required. To the extent response is required, Defendants admit that the independent review of the BMV's fee structure is protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

22. The BMV has not stated publicly how long any of the Inflated Fees were being charged before they were first discovered by the BMV, or before the overcharges were disclosed to the public. It is therefore impossible for any person or entity to know if they were required by the BMV to pay one or more of the Inflated Fees, or how many times they were required to pay an Inflated Fee.

ANSWER: Defendants state that the allegations in Paragraph 22 consist of characterization rather than allegations of specific fact, and therefore no response is required. To the extent response is required, Defendants deny that it is impossible for any person to know what fees he or she paid and whether those fees were consistent with Indiana law. Defendants further deny any allegation by Plaintiff that fees paid to the BMV are "mandatory" or "required," as such fees are collected for various licenses, registrations and other items incident to the privilege of operating motor vehicles on Indiana roads. *See e.g., Hazelwood v. State*, 3 N.E.3d 39, 40 (Ind. Ct. App. Feb. 5, 2014) ("driving is a privilege and not a right").

23. On October 15, 2013, counsel for the Plaintiff delivered a request to the BMV pursuant to the Indiana Public Records Act, IND. CODE § 5-14-3-1 *et seq.* A copy of the request is attached hereto and marked Exhibit E (hereafter the "Records Request"), and is incorporated herein by reference. The Records Request sought the following:

- A. All calculations and analyses performed by or on behalf of the Bureau of Motor Vehicles that identify the existence or amount of each of the "overcharges on a number of fees" referred to in the press release issued by the Bureau of Motor Vehicles on September 27, 2013, a copy of which is attached hereto as Exhibit A.

- B. The “independent review of its fee structure” performed for the Bureau of Motor Vehicles by Barnes & Thornburg and referred to in the press release issued by the Bureau of Motor Vehicles on September 27, 2013, a copy of which is attached hereto as Exhibit A, including any exhibits, appendices, addenda or other attachments or related documents or incorporated documents.
- C. All calculations and analyses performed by or on behalf of the Bureau of Motor Vehicles that were used to determine the amount of any fees set forth in the chart published by the Bureau of Motor Vehicles on its website as of September 27, 2013, a copy of which is attached hereto as Exhibit C, that are different from the fees set forth in the chart previously published by the Bureau of Motor Vehicles on its website with an effective date of June 28, 2013, a copy of which is attached hereto as Exhibit B, including but not limited to fees for the following: [list of Inflated Fees].

ANSWER: Defendants state that the document attached as Exhibit E to the Complaint speaks for itself, and no further response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the actions of Plaintiff’s counsel and deny any other allegations.

24. On November 13, 2013, the BMV delivered its written response to the Record Request to counsel for the Plaintiff. A copy of the response is attached hereto and marked Exhibit F (hereafter the “BMV Record Denial”), and is incorporated herein by reference. In response to each of the three categories of public records requested by counsel for the Plaintiff, the BMV Record Denial stated as follows:

BMV denies this request. The above records are subject to the attorney-client privilege, as set forth in Indiana Code §34-46-3-1, and are attorney work product. Therefore, these records are excepted from disclosure under Indiana Code §5-14-3-4(a)(1), Indiana Code §5-14-3-4(b)(2) and/or Indiana Code §5-14-3-4(b)(6).

ANSWER: Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff’s counsel set forth on Exhibit

E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

25. The BMV did not produce any public records in response to the Record Request. The BMV did not identify with specificity any of the public records withheld from production by the BMV. The BMV did not offer to redact the portions of the requested public records that the BMV asserts are protected from disclosure. The BMV did not separate the disclosable information from non-disclosable information in responding to the Record Request as required by IND. CODE §5-14-3-6(a).

ANSWER: Defendants state that the allegations in Paragraph 25 consist partially of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

26. Some or all of the public records requested by counsel for the Plaintiff and set forth in the Record Request are not subject to the attorney-client privilege under IND. CODE §34-46-3-1 or any other law, are not attorney work product, and are not excepted from disclosure under IND. CODE §5-14-3-4(a)(1), IND. CODE §5-14-3-4(b)(2) and/or IND. CODE §5-14-3-4(b)(6).

ANSWER: Defendants state that the allegations in Paragraph 26 consist partially of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's

counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

27. Indeed, the Record Request seeks BMV operational information that was not the subject of any attorney-client communications and therefore is not protected by the attorney-client privilege, and which is not protected by the work-product doctrine because it was not prepared by a lawyer and therefore does not reflect any attorney's mental impressions or strategy.

ANSWER: Defendants state that the allegations in Paragraph 27 consist partially of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

28. It is contrary to the statutorily-enacted public policy of the State of Indiana, and a violation of IND. CODE §5-14-3-1 *et seq.*, for the BMV to refuse to disclose the public records requested by counsel for the Plaintiff and set forth in the Record Request.

ANSWER: Defendants state that the allegations in Paragraph 28 consist partially of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege

and/or other privileges or protections and will not be made public, and deny any remaining allegations.

29. A person must have a motor vehicle Operator's License - or a specialty license such as a chauffer's license, commercial driver's license or motorcycle operator's license - in order to operate a motor vehicle upon an Indiana public highway. IND. CODE § 9-24-1-1. Similarly, every type of motor vehicle owned by an Indiana resident must be registered with the BMV to be lawfully operated upon an Indiana public highway. IND. CODE §. 9-18-2-1 *et seq.*

ANSWER: Defendants state that the allegations in Paragraph 29 consist of legal conclusions to which no response is required and deny any remaining allegations.

30. The BMV is the sole provider of drivers' licenses and registrations in Indiana, and residents cannot lawfully operate a motor vehicle upon an Indiana highway without them. Persons must meet the requirements imposed by the BMV in order to obtain licenses and registrations, and must pay whatever fee is imposed by the BMV as a condition for obtaining those items.

ANSWER: Defendants state that the allegations in Paragraph 30 consist of legal conclusions to which no response is required and deny any remaining allegations.

31. Drivers' licenses and registrations are necessary for businesses to function competitively and efficiently, for individuals to meet the basic necessities of modern life associated with the ability to travel, and for charitable and religious organizations to exist and provide social services. The ability to operate a motor vehicle on public highways impacts nearly every aspect of society and business.

ANSWER: Defendants state that the allegations in Paragraph 31 contain characterization to which no response is required. To the extent response is required, Defendants lack knowledge

or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and therefore deny the same.

32. The BMV has collected and retained millions of dollars in Inflated Fees from millions of persons and entities. In 2005, for example, there were more than 6 million motor vehicles registered with the BMV. See, http://www.stats.indiana.edu/web/county/car_reg05.asp (visited October 3, 2013). These millions of transactions do not include the commercial and motorcycle license fees, duplicate title fees, identification card fees and other Inflated Fees also disclosed by the BMV.

ANSWER: Defendants state that the allegations in Paragraph 32 contain characterization to which no response is required. To the extent response is required, Defendants state that the cited website speaks for itself and deny the remaining allegations.

33. In the Press Release, Defendant Waddell, the BMV Commissioner, stated that the BMV “has taken immediate steps to address any overcharges by crediting affected motorists’ accounts” This is an inadequate remedy for the BMV’s collection and use of the Inflated Fees from the Plaintiff and other persons and entities.

ANSWER: Defendants state that the Press Release speaks for itself, and no response is required. Defendants also state that the allegations also contain legal conclusions to which no response is required, and deny the remaining allegations.

34. Crediting affected motorists’ accounts is inadequate because it does not provide interest on money unlawfully exacted from the Plaintiff and others in the name of the state by a public officer, of which the state has had the possession and use, and of the use of which the proper owner has been deprived since it was so paid under compulsion.

ANSWER: Defendants deny the allegations in Paragraph 34 of the Complaint.

35. Crediting affected motorists' accounts is inadequate because it does not provide any remedy for persons or entities who will not engage in any transaction with the BMV in the future, including those who have left the state, those who are no longer driving and those who no longer own a motor vehicle in the State of Indiana.

ANSWER: Defendants deny the allegations in Paragraph 35 of the Complaint.

36. Crediting affected motorists' accounts is inadequate because it is not timely, and is speculative and uncertain. Persons or entities who have paid the Inflated Fees may not be able to receive a credit for years, and may not know with certainty that they will have occasion to engage in a future transaction with the BMV.

ANSWER: Defendants deny the allegations in Paragraph 36 of the Complaint.

37. Crediting affected motorists accounts is inadequate because it provides no means for the Plaintiff and other persons and entities to determine: (i) whether the Inflated Fees are the only fees that exceeded the amount permitted by Indiana law; (ii) whether the amount of the overcharge to be credited to some motorists is correct under Indiana law; (iii) the time period during which they were overcharged; and (iv) whether the fees set forth on the New Fee Chart are correct under Indiana law.

ANSWER: Defendants deny the allegations in Paragraph 37 of the Complaint.

38. Until the Inflated Fees were announced by the BMV on September 27, 2013, neither the Plaintiff nor any other person or entity knew or in the exercise of ordinary diligence should have known that they were injured as a result of paying the Inflated Fees.

ANSWER: Defendants deny the allegations in Paragraph 38 of the Complaint.

39. If any of the Inflated Fees were known by the BMV to be excessive at any time prior to the "independent review of its fee structure" by an outside law firm, as identified in the

September 27, 2013 Press Release, then the BMV intentionally misled the Plaintiff and other persons about the correct amount of such fees, hindered the Plaintiff and other persons and entities from obtaining information by the use of ordinary diligence that would have disclosed that the Inflated Fees were excessive, prevented inquiry and eluded investigation regarding the Inflated Fees, and violated a duty of candor and accuracy to the public, all by failing to disclose the overcharges, representing that the Inflated Fees were in fact correct under Indiana law, and actively concealing these facts – and the BMV’s knowledge of these facts – from the public. That violation is ongoing because the BMV refuses to disclose the basis for its determination of the amounts of the new charges.

ANSWER: Defendants deny the allegations in Paragraph 39 of the Complaint.

40. Regardless of when the Inflated Fees were charged to the Plaintiff and other persons and entities, the statute of limitations for any claim asserted in this Complaint as a result of the Inflated Fees therefore was tolled until a reasonable time after the September 27, 2013 Press Release.

ANSWER: Defendants deny the allegations in Paragraph 40 of the Complaint.

41. Plaintiff brings Counts I, II and III of this action on her own behalf and as a class action on behalf of the following class (herein referred to as the “Class”):

All persons and entities that paid one or more of the Inflated Fees to the Indiana Bureau of Motor Vehicles, excluding the judge assigned to the case and his or her spouse, and the Commissioner and General Counsel of the Bureau of Motor Vehicles.

ANSWER: Defendants admit that Plaintiff purports to bring Counts I, II, and III of this action on her own behalf and on behalf of a proposed class. Defendants deny that Plaintiff is entitled to any recovery in this matter. Defendants further deny that a proposed class should be certified and deny that the proposed class is entitled any recovery.

42. Plaintiff should be appointed as Representative of this Class, and her counsel, Cohen & Malad, LLP, should be appointed as Class Counsel.

ANSWER: Defendants deny the allegations in Paragraph 42 of the Complaint.

43. This action is properly maintainable as a class action under Trial Rule 23(A).

ANSWER: Defendants deny the allegations in Paragraph 43 of the Complaint.

44. The class consists of millions of persons and entities throughout the State, such that joinder of all Class members is impracticable.

ANSWER: Defendants deny the allegations in Paragraph 44 of the Complaint.

45. There are questions of law and fact that are common to the Class members, including the common course of conduct by the BMV in charging the fees that are the subject of this action and the common sources of legal authority applicable to determine the lawfulness of such fees.

ANSWER: Defendants deny the allegations in Paragraph 45 of the Complaint.

46. The claims of the Plaintiff are typical of the claims of the proposed Class because they are based on the same legal theories, and Plaintiff has no interests that are antagonistic to the interests of the Class members.

ANSWER: Defendants deny the allegations in Paragraph 46 of the Complaint.

47. The Plaintiff is an adequate representative of the Class and has retained competent legal counsel experienced in class actions and complex litigation.

ANSWER: Defendants deny the allegations in Paragraph 47 of the Complaint.

48. This action is properly maintainable as a class action under Trial Rule 23(B)(3), because questions of law or fact common to the members of the class predominate over any

questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

ANSWER: Defendants deny the allegations in Paragraph 48 of the Complaint.

49. The questions of law and fact common to the Class predominate over any questions affecting only individual Class members, particularly because the focus of the litigation will be on the conduct of the BMV. The predominant questions of law and fact in this litigation include, but are not limited to: (i) the various types of Inflated Fees charged to Class members; (ii) the amount by which the Inflated Fees charged by the BMV to Class members exceeded the amount permitted by Indiana law for such fees; (iii) the length of time that the BMV charged the Inflated Fees to Class members; (iv) the number of times that the BMV charged the Inflated Fees to Class members; (v) the total amount of Inflated Fees collected and retained by the BMV from Class members; and (vi) the type and amount of relief to which the Plaintiff and Class members are entitled.

ANSWER: Defendants deny the allegations in Paragraph 49 of the Complaint.

50. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would not be economically feasible for individual Class members and would cause a strain on judicial resources, yet each Class member would be required to prove an identical set of facts in order to recover damages.

ANSWER: Defendants deny the allegations in Paragraph 50 of the Complaint.

51. No other persons who fall within the Class definition set forth above are pursuing similar litigation, such that individual Class members do not wish to control the prosecution of separate actions.

ANSWER: Defendants admit that no other plaintiff and/or plaintiff's counsel has filed suit to cause the BMV to do what it already is doing, and deny any remaining allegations.

52. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

ANSWER: Defendants incorporate their answers to the preceding paragraphs as their answer to Paragraph 52 of the Complaint.

53. Plaintiff and the members of the Class have conferred a measurable benefit on the BMV under such circumstances such that the BMV's retention of the benefit without payment to the Plaintiff and the Class would be unjust.

ANSWER: Defendants deny the allegations in Paragraph 53 of the Complaint.

54. The fees paid to the BMV by the Plaintiff and members of the Class were expressly or impliedly requested by the BMV.

ANSWER: Defendants deny the allegations in Paragraph 54 of the Complaint.

55. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

ANSWER: Defendants incorporate their answers to the preceding paragraphs as their answer to Paragraph 55 of the Complaint.

56. The BMV has received money from the Plaintiff and members of the Class, under such circumstances that in equity and good conscience the BMV ought not to retain the same.

ANSWER: Defendants deny the allegations in Paragraph 56 of the Complaint.

57. The amount of the Inflated Fees paid by the Plaintiff and members of the Class that is in excess of the amount that could lawfully be charged is money that, according to what is equitable, belongs to the Plaintiff and members of the Class.

ANSWER: Defendants deny the allegations in Paragraph 57 of the Complaint.

58. The Plaintiff and members of the Class have a legal right to money in the possession of the BMV, and in equity and good conscience the BMV ought to pay this money to the Plaintiff and members of the Class.

ANSWER: Defendants deny the allegations in Paragraph 58 of the Complaint.

59. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

ANSWER: Defendants incorporate their answers to the preceding paragraphs as their answer to Paragraph 59 of the Complaint.

60. Under the circumstances of this case, equity demands that the Plaintiff, the Class and the Court receive information sufficient to determine: (i) whether the Inflated Fees are the only fees that exceeded the amount permitted by Indiana law; (ii) whether the amount of the overcharge to be credited to some motorists is correct under Indiana law; (iii) whether the fees set forth on the New Fee Chart are correct under Indiana law; (iv) the total amount of the Inflated Fees imposed on the Class; and (v) the time period during which the Inflated Fees were charged.

ANSWER: Defendants deny the allegations in Paragraph 60 of the Complaint.

61. In order to render complete justice for the Plaintiff and the Class in one action, the Court should order a thorough and complete accounting by the BMV of the identity, extent and duration of any overcharge for fees imposed by the BMV.

ANSWER: Defendants deny the allegations in Paragraph 61 of the Complaint.

62. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

ANSWER: Defendants incorporate their answers to the preceding paragraphs as their answer to Paragraph 62 of the Complaint.

63. Counsel for the Plaintiff made a valid request to the BMV, a public agency, for the production of public records pursuant to IND. CODE §5-14-3-1 *et seq.*, as set forth in the Record Request.

ANSWER: Defendants state that the allegations in Paragraph 63 consist of legal conclusions to which no response is required. To the extent response is required, Defendants deny that any such request was made on behalf of Plaintiff, state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the actions of Plaintiff's counsel and deny any other allegations.

64. Counsel for the Plaintiff have been denied the right to inspect or copy the public records set forth in the Records Request, as stated in the BMV Record Denial.

ANSWER: Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

65. Some or all of the public records requested by counsel for the Plaintiff and set forth in the Record Request are not subject to the attorney-client privilege under IND. CODE §34-46-3-1 or any other law, are not attorney work product, and are not excepted from disclosure under IND. CODE §5-14-3-4(a)(1), IND. CODE §5-14-3-4(b)(2) and/or IND. CODE §5-14-3-4(b)(6).

ANSWER: Defendants state that the allegations in Paragraph 65 consist of legal conclusions to which no response is required. Defendants state that the document attached as

Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

66. The Record Request seeks documents, materials or investigative reports that are not work product because, among other reasons, they were developed or obtained in the ordinary course of business, and not prepared in anticipation of litigation, or are the subject of a waiver of any privilege. Further, acts performed by a public employee in the performance of his or her official duties are not prepared in anticipation of litigation or for trial merely by virtue of the fact that they are likely to be the subject of later litigation, and the mere fact that a public official is also a lawyer does not render all of his or her official acts work product.

ANSWER: Defendants state that the allegations in Paragraph 66 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

67. The Record Request seeks documents, materials or investigative reports that are not protected by attorney-client privilege because, among other reasons, they set forth only facts and information, are not communications to or from counsel, do not reveal the substance of

confidential communications by the BMV to counsel, or are the subject of a waiver of any privilege.

ANSWER: Defendants state that the allegations in Paragraph 67 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

68. The Record Request seeks documents, materials or investigative reports that are not advisory or deliberative material protected from disclosure because, among other reasons, are merely factual and not expressions of opinion or of a speculative nature, are not communicated for the purpose of decision-making, are post-deliberation, evidence the implementation of policy instead of decision-making, or are the subject of a waiver of any privilege.

ANSWER: Defendants state that the allegations in Paragraph 68 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

69. The BMV did not redact the non-protected portions of the requested public records that the BMV asserts are protected from disclosure, and did not separate the disclosable

information from non-disclosable information in responding to the Record Request, as required by IND. CODE §5-14-3-6(a).

ANSWER: Defendants state that the allegations in Paragraph 69 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

70. The BMV did not identify with specificity any of the public records withheld from production by the BMV.

ANSWER: Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

71. It is contrary to the statutorily-enacted public policy of the State of Indiana, and a violation of IND. CODE §5-14-3-1 *et seq.*, for the BMV to refuse to disclose some or all of the public records requested by counsel for the Plaintiff and set forth in the Record Request.

ANSWER: Defendants state that the allegations in Paragraph 71 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's

counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

72. The BMV's denial of access to the public records set forth in the Records Request is arbitrary or capricious.

ANSWER: Defendants state that the allegations in Paragraph 72 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

73. The Court should determine *de novo*, with the burden of proof on the BMV, whether the public records set forth in the Records Request should be produced in whole or in part by the BMV.

ANSWER: Defendants state that the allegations in Paragraph 73 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

74. The Court should expedite the hearing of this Count IV – Action to Compel Production of Public Records.

ANSWER: Defendants state that the allegations in Paragraph 74 consist of legal conclusions to which no response is required. Defendants state that the document attached as Exhibit F to the Complaint speaks for itself, and no further response is required. To the extent response is required, Defendants admit that the materials purportedly sought by Plaintiff's counsel set forth on Exhibit E to the Complaint are protected by the attorney-client privilege and/or other privileges or protections and will not be made public, and deny any remaining allegations.

WHEREFORE, Defendants request that judgment be entered in favor of Defendants and against Plaintiff, that Plaintiff take nothing by way of her complaint, and that Plaintiff and/or her counsel be ordered to reimburse Defendants' attorney fees and other expenses incurred in responding to Plaintiff's frivolous claim pursuant to Indiana Code § 34-52-1-1.

II. ADDITIONAL DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff lacks standing to bring her claim.
3. Plaintiff failed to exhaust available administrative remedies.
4. This Court lacks subject matter jurisdiction over Plaintiff's claims.
5. The Complaint is barred, in whole or in part, by the doctrines of collateral estoppel, estoppel, waiver, res judicata, laches, and/or unclean hands.
6. Plaintiff failed to comply with the requirements of the Indiana Tort Claim Act.
7. Plaintiff's claims fail and/or are barred, in whole or in part, by the State of Indiana's sovereign immunity.

8. The statutes and administrative code sections, upon which the substance of Plaintiff's claims is based, do not provide a private right of action.

9. Plaintiff was not overcharged with respect to any of the fees and charges Plaintiff refers to as "Inflated Fees."

10. Plaintiff's claims are waived and/or released pursuant to the settlement of Plaintiff's first class action complaint against the BMV.

11. Plaintiff is equitably estopped from pursuing these claims by the conduct and/or statements of Plaintiff and her counsel during the pendency and settlement of Plaintiff's first class action complaint against the BMV.

12. Plaintiff's claims fail or are barred by the doctrine of accord and satisfaction.

13. Plaintiff's claims fail, in whole or in part, by operation of the applicable statute of limitations.

14. Plaintiff and Plaintiff's counsel filed this action without conducting the requisite level of investigation required, among other things, by Indiana Trial Rule 11.

15. Plaintiff's claims are without merit, and Plaintiff and/or Plaintiff's counsel should be ordered to reimburse the Defendants for their attorney fees and other expenses incurred in responding to Plaintiff's frivolous claim pursuant to Indiana Code § 34-52-1-1.

16. The BMV and the State of Indiana were not unjustly enriched by overcharges at the expense of Plaintiff and the putative class if, and to the extent that, Plaintiff and Plaintiff Class benefited from undercharges by the BMV.

17. To the extent Plaintiff and the putative class of plaintiffs are entitled to damages related to overcharges, Defendants are entitled to an equitable offset in the amount of any undercharges by which Plaintiff and Plaintiff Class benefited.

18. Public policy is ill-served by a lawsuit in which Plaintiff's class action counsel seeks an award, purportedly for the benefit of Indiana taxpayers, the cost of which will be borne by Indiana taxpayers, with an additional cost to taxpayers in the amount of any fee award to Plaintiff's counsel. Indiana taxpayers are the ultimate losers, and Plaintiff's Counsel are the only winners.

19. Defendants reserve the right to amend and/or supplement their defenses as litigation and discovery continue.

III. COUNTERCLAIM

For their counterclaim, Defendants state that, if and to the extent the class is entitled to damages related to overcharges by the BMV, the BMV is entitled to have any such damages reduced by the amount of undercharges by which the class benefited. In support of such claim, the BMV states:

1. On September 27, 2013, the BMV issued a press release notifying the public that an independent review had determined that the BMV inadvertently had been charging fees in incorrect amounts, both by overcharging and by undercharging various fees (the "Press Release") (copy attached as Exhibit A to Plaintiff's Amended Complaint).

2. Contemporaneously with its issuance of the Press Release, the BMV took steps to credit the amount of identified overcharges to customer accounts. Those credits automatically are applied as part of the customer's next transaction with the BMV. Customers also may, through the BMV's website, request the issuance of a check in the amount of any refund due.

3. Notwithstanding the fact that the BMV already was providing refunds to overcharged customers, which refunds are ongoing, on October 11, 2013, Plaintiff filed her Class Action Complaint "to recover millions of dollars in unlawful fees collected from Indiana

residents for vehicle registrations and other services.” Plaintiff’s Class Action Complaint alleged that the BMV had overcharged customers with respect to twenty-nine (29) enumerated fees. On December 17, 2013, Plaintiff filed her First Amended Class Action Complaint (“Amended Complaint”), which alleges overcharges related to the same twenty-nine (29) fees.²

4. Plaintiff styles her claims as equitable, for “unjust enrichment,” “money had and received,” and “accounting.”

5. The remedy for equitable claims, such as those named in Plaintiff’s Amended Complaint, is restitution.³

6. The application of the doctrine of restitution requires the Court to consider the extent to which any undercharges benefitted the class, because restitution “implies a restoration of the status quo.” *Goff v. Graham*, 306 N.E.2d 758, 767 (Ind. Ct. App. 1974).

7. Accordingly, if the class was undercharged, any award of damages in favor of the class, must be adjusted to account for such undercharges.

² Plaintiff’s Amended Motion for Class Certification, filed on February 2, 2015, purports to broaden her claims to include dozens of additional fees (the “New Fees”). The Court’s September 18, 2015, Order Granting Plaintiff’s Motion for Class Certification does not question this broadened definition of the class, despite the fact that it is not part of any pleading, and it conflicts with the definition contained in the Amended Complaint. Regardless, to the extent the New Fees are deemed within the scope of Plaintiff’s Complaint, the same equitable rules apply equally to them.

³ Defendants disagree with Plaintiff’s assertion that her claims are truly equitable in nature and have argued at multiple junctures that Plaintiff’s claims sound in tort and therefore are barred by the Indiana Tort Claims Act (in light of Plaintiff’s undisputed failure to file a Tort Claim Notice). Defendants assert this counterclaim out of abundance of caution and in light of the Court’s September 18, 2015, Order Granting Plaintiff’s Motion for Class Certification, which could be read to require Defendants to assert such a counterclaim to establish the relevance of clear evidence of undercharges. By addressing Plaintiff’s claims as equitable within the scope of this claim and related defenses, Defendants do not intend to waive and expressly preserve their argument that Plaintiff’s claims sound in tort and are barred by the Tort Claims Act.

8. Similarly, if the amount of the undercharges is equal to or exceeds the amount by which the class was overcharged, there is no basis to award restitution to the Plaintiff Class.

COUNT I

9. Defendants incorporate herein each of the allegations contained in the preceding paragraphs of the Counterclaim.

10. The BMV undercharged the putative class for fees included within the "Inflated Fees" identified in Paragraph 18 above and within the "New Fees" identified in Note 2 above (the "Undercharges").

11. The BMV does not seek an affirmative award of damages against the class or any class member. The BMV seeks relief only to ensure that the amount of any award of damages to the Plaintiff and the Plaintiff Class is adjusted through a balancing of equities to off-set the amount of the Undercharges against such award.

12. The Undercharges conferred a measurable benefit on the class, and under the present circumstances, in which the Plaintiff and Plaintiff Class seek an award of damages related to overcharges, the retention of that benefit without an equitable offset would be unjust.

13. The class is entitled to recover damages for overcharges only if and to the extent the amount of those overcharges is greater than the amount of the Undercharges.

WHEREFORE, Defendants request that any award of damages to Plaintiff or the Plaintiff Class be reduced by an offset in the amount by which Plaintiff and the Plaintiff Class benefitted from the Undercharges, and for all other appropriate relief.

Respectfully submitted,



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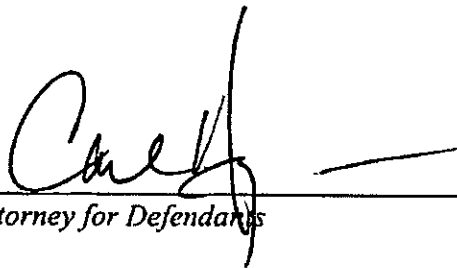
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by first class U.S. Mail, postage prepaid, with a courtesy copy sent via e-mail, this 2 day of November, 2015.

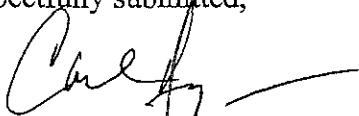
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An attorney for Defendants

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Respectfully submitted,

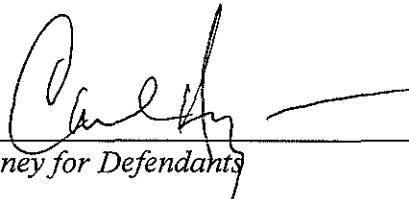


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by first class U.S. Mail, postage prepaid, with a courtesy copy sent via e-mail, this 21st day of March, 2016.

Irwin Levin
Richard Shevitz
Scott Gilchrist
Vess Miller
Lynn Toops
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An attorney for Defendants