

19TH JUDICIAL DISTRICT COURT

FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DOCKET NO: 057012

SECTION: D

JEFF LANDRY, in his official capacity as
ATTORNEY GENERAL FOR THE STATE OF LOUISIANA, and
THE DEPARTMENT OF JUSTICE

VERSUS

JAY DARDENNE, in his official capacity
as COMMISSIONER OF ADMINISTRATION,
OFFICE OF THE GOVERNOR, FOR THE STATE OF LOUISIANA, and
THE DIVISION OF ADMINISTRATION

VERIFIED PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, come **JEFF LANDRY**, appearing in his official capacity as the Attorney General for the State of Louisiana, and **THE DEPARTMENT OF JUSTICE**, who respectfully represent that:

1.

Petitioner **JEFF LANDRY** is the duly elected Attorney General for the State of Louisiana and is the Chief Legal Officer of the State charged with the assertion and protection of the legal rights and interests of the State and the citizens of the State.

2.

Petitioner **THE DEPARTMENT OF JUSTICE** ("DOJ") is a constitutionally-created department of the State of Louisiana, with the power to sue

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DEPUTY CLERK OF COURT

and be sued, represented herein by its constitutional head, **ATTORNEY GENERAL JEFF LANDRY**.

3.

Made defendants herein are **JAY DARDENNE**, in his official capacity as Commissioner of Administration, Office of the Governor, for the State of Louisiana, and **THE DIVISION OF ADMINISTRATION** (“DOA”).

4.

DOJ, from time to time, engages in litigation which results in self-generated revenue in the form of settlements or other recoveries. DOJ’s budget, duly appropriated by the Louisiana Legislature, in fiscal year 2016-17 (“FY17”) is composed of approximately 20% of such revenue, for which expenditure authority is granted to the Attorney General. If cash is not realized by DOJ from such sources to support the expenditure authority, then DOJ cannot expend the appropriated funds for its constitutionally and statutorily mandated operations. In other words, DOJ cannot spend empty budget authority.

5.

The DOJ consumer escrow account is an account approved by the Cash Management Review Board to initially receive and hold settlement funds in abeyance in the Treasury while they await further classification into *appropriated* budget categories; therefore, these funds must be *re-classified* into these appropriated recognized budget categories before they can be *spent*. DOJ currently has certain funds held in its consumer escrow account by the State Treasury identified as the residual proceeds of Average Wholesale Price (“AWP”) litigation.

6.

At issue in this suit is a portion of the proceeds from the fall 2013 settlement of an AWP lawsuit, *State of Louisiana v. GlaxoSmithKline, LLC, et al.*, Docket No. 599,353 in the Nineteenth Judicial District Court for the Parish of East Baton

Rouge, State of Louisiana. The total amount of such settlement was \$42,516,242.31, all of which was initially deposited into the DOJ consumer escrow account. Of that amount, \$40,235,135.81 was attributable to the State's cause of action under the Louisiana Unfair Trade Practices and Consumer Protection Law. Federal regulations allowed DOJ to retain 9.9% of that amount – \$3.98 million – as administrative fees. DOJ paid the remaining balance of the proceeds out of the consumer escrow account to the appropriate recipients, including in excess of \$37 million paid into the Overcollections Fund. DOJ has never redirected or re-classified the \$3.98 million from escrow.

7.

In order for DOJ to spend funds in escrow, the funds must be re-classified from escrow to the Legal Support Fund or Self-Generated Revenue, both of which contain expenditure authority but no cash. DOJ and other agencies re-classify funds using the statewide accounting system, ISIS, and specifically by executing a *J-2 Voucher*.

8.

The Commissioner of Administration operates ISIS through the Office of Statewide Reporting and Accounting Policy (“OSRAP”). A J-2 Voucher is initiated by an agency, and then processed by both OSRAP and the State Treasurer.

9.

DOJ attempted to re-classify the \$3.98 million by way of a properly submitted J-2 Voucher. Although the approval of a J-2 Voucher is ordinarily ministerial and accomplished in approximately 24 hours, DOA refused to approve the J-2 Voucher. After several weeks, the Attorney General requested a conference call with Deputy Commissioner Denise Honoree Thomas to obtain information on why the transfer was not being approved. Deputy Commissioner Thomas and Executive Counsel Rick McGimsey stated DOA's belief that 2013 La.

Acts 420 required the funds to be transferred to the Overcollections Fund. On that basis, Ms. Thomas sent a letter dated March 1, 2017 proposing that the funds be sent to the Overcollections Fund.

10.

Section 6 of 2016 La. Acts 601 clearly and unambiguously terminated any continuing obligations related to 2013 La. Acts 420 by declaring any outstanding transfers arising therefrom “null and void and of no further effect.” Act 601, attached as Exhibit A to this Petition, is incorporated herein in full by reference.

11.

Notwithstanding the effect of Act 601 on Act 420, the \$3.98 million represents funds that were never intended to be part of any transfer of funds mandated by Act 420, as evidenced in part by the fact that Act 420 references the transfer of “net settlement funds.”

12.

Receipt of these funds by DOJ is necessary to ensure continuity of operations, to make payroll, to cover expenses of ongoing litigation, and to avoid a deficit in the DOJ budget.

13.

OSRAP’s duties are ministerial in nature and OSRAP has no discretion to arbitrarily deny, change, or re-direct funds inconsistent with a legislative appropriation. Moreover, OSRAP has a duty to *all departments and state agencies* to act both impartially and consistently toward agencies and independent statewide officers with regard to J-2 Vouchers.

14.

DOA, though OSRAP, has engaged in arbitrary and capricious actions to delay approval of the DOJ J-2 Vouchers and block DOJ’s access to funds, as

evidenced by blocking fund re-classifications for reasons that are clearly frivolous and legally unfounded.

15.

DOA's actions closely follow prior actions in the first half of the fiscal year, wherein the Governor and DOA blocked the transfer of approximately \$9 million in interagency funds from the Division of Administration, Office of Risk Management, which was appropriated to DOJ in FY17 for risk litigation defense of State agencies and officials. The Governor and DOA then attempted to unilaterally force DOJ to accept a \$2 million cut to the risk litigation interagency funds transfer, but failed because they lacked legal authority to unilaterally reduce a legislative appropriation. DOA subsequently attempted without any legal basis or authority to block a J-2 request issued by DOJ re-classifying a \$4.4 million in interagency funds.

16.

After weeks of delay and obfuscation, the Governor issued a press release indicating his intent to disproportionately cut the budget of DOJ by cutting \$1.9 million in budgeted funds and redirecting the \$3.98 million in cash from the settlement funds held in escrow, those funds being the object of this litigation.

17.

Throughout a special session of the Legislature in early 2017, DOA – on orders of the Governor and/or his staff – continued to refuse to act on the DOJ's J-2 Voucher.

18.

During that special session, the Legislature *rejected* the Governor's plan to re-direct the \$3.98 million in settlement funds.

19.

In the waning hours of the special session, the executive counsel to the Governor stated that if the Governor was unable to strip DOJ of the \$3.98 million in settlement funds and DOJ would not voluntarily agree to give up some of these funds, the Governor would simply arbitrarily block *all* of DOJ's fund transfer requests, effectively paralyzing DOJ's budget operations. The Governor also made public statements after the session ended that, even though his proposal had been rejected by the Legislature, he did not intend to permit the movement of these funds. Thus, upon the information and belief of DOJ, the Commissioner and DOA have no legitimate legal basis on which to refuse to approve the J-2 transfer.

20.

The Governor and/or his staff have unconstitutionally interfered with the operations of DOJ and unconstitutionally interfered with the ability of the Attorney General to carry out his constitutional and statutory duties by arbitrarily using the statewide accounting system as a political weapon, by engaging in a deliberate pattern of interfering with the Attorney General's budget, by blocking DOJ from receiving duly appropriated funds, and specifically by directing DOA staff to create obstacles that delay and/or block approval of the DOJ's J-2 Vouchers, all as a means of unconstitutional control and/or retribution.

21.

The Attorney General is a constitutional officer of this State, duly elected by the citizens of the State of Louisiana. The DOJ budget is duly appropriated and enacted by the Legislature, subject to legislative oversight and ministerial accounting oversight implemented statewide by DOA for the benefit of all executive agencies.

22.

The courts of this State have confirmed that general administrative authority granted by statute to DOA cannot be politicized and used to impose the Governor's will and/or policy decisions upon an independent constitutional officer, to interfere with the operations and decisions of independent constitutional officers or bodies, or to exact retribution. *See Hill v. Jindal*, 14-1757 (La. App. 1 Cir. 6/17/15), 175 So.3d 988, *writ denied*, 15-1394 (La. 10/23/15), 179 So.3d 600.

23.

The Attorney General is in dire need of these funds to continue the full, competent, and effective discharge of his constitutional and statutory duties as the Chief Legal Officer for the State of Louisiana and head of DOJ. The arbitrary and capricious conduct of the Governor and DOA undermines the State constitutional structure of independently-elected executive branch officers. Moreover, these actions threaten the ongoing operations of DOJ, specifically placing at peril funds necessary to defend pending lawsuits that expose the public fisc and taxpayers to great liability.

24.

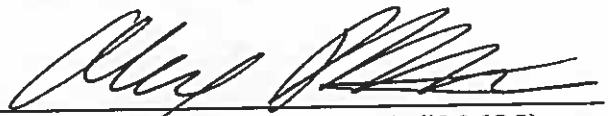
Accordingly, **JEFF LANDRY**, in his official capacity as the duly elected **ATTORNEY GENERAL** for the State of Louisiana, and as the Chief Executive Officer of Louisiana Department of Justice, and **THE DEPARTMENT OF JUSTICE** petition this Honorable Court to declare any remaining outstanding transfers directed by 2013 La. Acts 420 null and void, pursuant to the plain, unambiguous language of that legislation. Furthermore, DOJ is entitled to a transfer of the \$3.98 million from the DOJ consumer escrow account to the Legal Support Fund and/or Self-Generated Revenue, at its discretion, irrespective of any dictates of Act 420.

WHEREFORE, petitioner prays that:

- I. This petition be served upon Defendants;
- II. A judgment issue declaring that any outstanding transfers directed by 2013 La. Acts 420 that had not been effected by the effective date of 2016 La. Acts 601, are null and void and of no further effect;
- III. All costs of these proceedings be taxed against the Defendants; and,
- IV. Petitioners be granted all other general and equitable relief.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

By: 

Elizabeth Baker Murrill (LSBA #20685)
Solicitor General

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Attorneys for Plaintiffs

ATTORNEY GENERAL JEFF LANDRY
and THE LOUISIANA DEPARTMENT OF
JUSTICE

PLEASE SERVE:

Jay Dardenne, Commissioner of Administration
1201 N. Third Street
Baton Rouge, LA 70802

The Division of Administration,
through its Commissioner of Administration,
Jay Dardenne
1201 N. Third Street
Baton Rouge, LA 70802

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VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, duly commissioned and
qualified in and for the aforesaid parish and state,

PERSONALLY CAME AND APPEARED:

JEFF LANDRY, appearing in his official capacity as the Attorney General
for the State of Louisiana,

who, after being duly sworn, did depose and state that:

1.

He has read the above and foregoing petition.

2.

He hereby verifies that all of the allegations contained in the above and
foregoing petition are true and correct to the best of his knowledge, information,
and belief.

3.

He is duly authorized and empowered to execute this verification on behalf of the Louisiana Department of Justice.


JEFF LANDRY

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 10th day of April, 2017, in Baton Rouge, East Baton Rouge Parish, Louisiana.


NOTARY PUBLIC

Alexander T. Reinboth
LA Bar Roll No. 34048
Notary Public
Parish of East Baton Rouge
State of Louisiana
My Commission is for Life