

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
ROBERT MCGRATH JR., on behalf of
himself and all others similarly situated,

Plaintiff,

Index No.:
Date Filed:

Plaintiffs designate Suffolk
County as the place of trial

-against-

SUMMONS

SUFFOLK COUNTY and the
SUFFOLK COUNTY TRAFFIC
AND PARKING VIOLATION AGENCY,

Defendants.

Basis of Venue: Residence of Plaintiff
Plaintiff(s) resides at: 3 Vale Court
Mt. Sinai, NY 11766

-----X
To the above-named Defendant(s):

You are hereby summoned and required to serve upon plaintiff's attorney an Answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of the venue designated is the residence of the plaintiff, which is: 3 Vale Court Mt. Sinai, NY 11766.

NOTICE OF COMMENCEMENT OF ACTION SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel **and/or parties who do not notify the court of a claimed exemption** (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filings are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: Lake Grove, New York
May 27, 2016


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TO:
Suffolk County
H. Lee Dennison Bldg.
100 Veterans Memorial Highway
Hauppauge, NY 11788

Suffolk County Traffic and Violations Agency
H. Lee Dennison Bldg.
100 Veterans Memorial Highway
Hauppauge, NY 11788

SEND TO YOUR INSURANCE CARRIER IMMEDIATELY

SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY

X

ROBERT MCGRATH JR., on behalf of
himself and all others similarly situated,

Index No.:

Plaintiff,

v.

CLASS ACTION COMPLAINT

SUFFOLK COUNTY and the SUFFOLK
COUNTY TRAFFIC AND PARKING
VIOLATION AGENCY,

Defendants.

X

Plaintiff, Robert McGrath Jr. (“Plaintiff”), by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge.

I. NATURE OF THE ACTION

1. This is a class action against Defendants Suffolk County (“Suffolk” or “the County”) and Suffolk County Traffic and Parking Violation Agency (“SCTPVA”) (collectively “Defendants”) arising from their *ultra vires* and unconstitutional imposition of an \$80 fine for violations of Defendants’ red-light camera program. New York State Vehicle and Traffic Law section 1111-b clearly limits liability to \$50 per violation but Defendants disregard this limitation to the detriment of Plaintiff and the class members.

2. In 2009, the State of New York authorized Suffolk County to begin installing red-light cameras at its intersections. These cameras photograph the license plate of any driver that

are accused of running a red light and the vehicle owner is mailed a ticket notifying them that they've been fined. Despite the fact that state law caps these fines at \$50, in 2013—in response to a declared fiscal emergency—the County began charging drivers \$80: the \$50 penalty plus what the County describes as a \$30 “administrative fee” or “driver responsibility fee.” This fee, however, is simply an unauthorized, additional fine designed to increase County revenues.

3. Suffolk’s \$30 fee is thus an unauthorized, unconstitutional attempt to expand driver liability beyond the limits delineated by the state legislature. Accordingly, Mr. McGrath seeks a declaratory judgment that the \$30 fines are unconstitutional, ultra vires, and void, and an injunction requiring Defendants to disgorge any of the “administrative fees” they have collected. Mr. McGrath also alleges that, by charging the fee, Defendants have committed fraud or negligent misrepresentation and been unjustly enriched. He seeks damages accordingly.

II. VENUE

4. Venue is appropriate in Suffolk County under CPLR § 504 because Mr. McGrath resides within the county and Defendants are situated here.

III. PARTIES

5. Plaintiff Robert McGrath Jr. is an individual residing in Brookhaven, Suffolk County.

6. Defendant Suffolk County is a county in New York State.

7. Defendant Suffolk County Traffic and Parking Violation Agency is the Suffolk County agency charged with administering the County’s red-light program. It became operational in 2013.

IV. STATEMENT OF FACTS

A. An overview of Suffolk’s red-light program:

8. In March 2009, the New York state legislature enacted Vehicle and Traffic Law section 1111-b, which authorized Suffolk County to adopt a local law establishing a red-light program; i.e., the installation of what are commonly referred to as red-light cameras at various intersections throughout the County. These cameras take photographs of cars that are accused of running red lights, license-plate numbers are pulled from the photos, and the owners of the cars are mailed tickets.

9. Section 1111-b specifically precludes local governments from imposing liability on drivers for violations of red-light camera violations in an amount greater than \$50 per violation, with the exception of a possible \$25 late fee:

An owner liable for [running a red light] shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be set forth in such local law or ordinance. *The liability of the owner pursuant to this section shall not exceed fifty dollars for each violation;* provided, however, that such local law or ordinance may provide for an additional penalty not in excess of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

N.Y. Veh. & Traf. Law § 1111-b(e) (emphasis added).

10. In June 2009, Suffolk passed Local Law 20-2009, implementing the red-light program authorized by 1111-b. Suffolk initially adhered to the \$50 maximum described in the state law.

11. Suffolk County contracted with ACS State & Local Solutions (“ACS”) to establish and maintain its red-light program. The contract specified that the County would not have to pay for the red-light program, which was to be entirely funded out of the fines generated by the red-light cameras. The contract explicitly notes that there is “No Cost to County” in running the red-light program, and that “[t]here shall be no expenditure by the County of any operating or capital funds related to or in connection with ACS’s establishment, provision and

maintenance of the Red Light Camera Safety Program.” ACS was instead to be paid \$37 of each \$50 fine collected for the first 90 citations at each traffic approach where cameras were set up. Suffolk retained the rest. Once the 90 citation quota was met, ACS was paid \$17 of each \$50 fine collected and Suffolk retained the rest. Under its contract with the County, ACS was responsible—in essence—for overseeing the entirety of Suffolk’s red-light program, including identifying potential sites for the red-light cameras; installing and maintaining the cameras; initially reviewing red-light photos; mailing tickets to owners; collecting and distributing owner payments; and performing debt-collection services.

12. Suffolk’s red-light program became effective on July 15, 2010. Even with liability under the program limited to \$50 (plus late fees), as mandated by state law, between 2010 and 2012—after accounting for ACS’s share of revenues—the red-light program earned Suffolk roughly \$13 million.

13. But in 2012, Suffolk’s County executive declared a financial emergency, noting that the County was, ““without question,”” facing ““the worst fiscal crisis in the history of the county.””¹ A task force assigned to review the County’s finances found that Suffolk’s expenses had been increasing each year, but its revenues had not kept pace, and the County was facing a possible deficit in 2013; the first in more than twenty years.²

14. In response, Suffolk began searching for means of increasing revenues without increasing taxes.³ Defendants found a solution in the red-light program. In 2013, it began to

¹ Mary Williams Walsh, *Suffolk County Cites Emergency in Finances*, N.Y. Times, Mar. 6, 2012, http://www.nytimes.com/2012/03/07/nyregion/suffolk-county-executive-declares-a-financial-emergency.html?_r=0.

² *Id.*

³ *Id.*

expand its red-light program from 50 intersections to 100 and implemented a \$30 “administrative fee” on all red-light camera program citations after April 1, 2013.

15. Of course, at the time, Defendants were already capable of paying for the red-light program, which by contract was costless: in fact, it *earned* Defendants millions of dollars every year.

16. Suffolk amended its contract with Xerox State & Local Solutions, Inc. (“Xerox”)—which had purchased ACS—to stipulate that the vendor was not entitled to any of the “administrative fees” generated by the red-light program: “It is specifically understood and agreed by [Xerox] that it is not entitled to be paid any percentage of any administrative fee charged by County.” The amendment also altered Xerox’s payment structure such that Xerox would earn 42% of all fines generated, and 50% of the late fees resulting from default-warning notices sent by Xerox.⁴ Xerox’s red-light services were still provided at “No Cost to County.”

17. In December 2013, public outcry prompted Suffolk to amend its Local Law to stipulate that the administrative fee was to be charged only against those found guilty of, or who

⁴ Being paid, like Xerox, on a per-ticket basis a payment structure that has been outlawed in some localities, and decried by federal agencies and public advocacy organizations, because it is primarily a means of generating profits for the third-party vendor. The Federal Highway Administration has explicitly warned that red-light-camera vendors “should not be paid on a per-ticket basis due to potential conflict of interest issues that may arise from this arrangement.” FHA, *Using Automated Enforcement to Reduce to reduce Red-Light Running* at 3 (Nov. 2009), http://safety.fhwa.dot.gov/intersection/other_topics/fhwasa09027/resources/Intersection%20Safety%20Issue%20Brief%207.pdf. The National Cooperative Highway Research Program has also recommended that per-ticket payment structures be avoided. NCHRP, *Automated Enforcement for Speeding and Red Light Running* at 17 (2012), http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_729.pdf.⁴ And a nationwide report by the U.S. PIRG Education Fund even cites Suffolk County as having entered into a contract that potentially “put[s] profit above traffic safety.” U.S. PIRG Education Fund, *Caution: Red Light Cameras Ahead* at 2 (Oct. 2011), <http://www.uspirg.org/sites/pirg/files/reports/Caution---Red-Light-Cameras-Ahead.pdf>. Xerox is even paid a flat fee for underperforming cameras; i.e., those that fail to generate a minimum amount of tickets.

plead guilty to, running a red light. *See* Local Law 6-2014. In 2014, Defendants refunded various fees assessed against those who were found not guilty.

18. The additional \$30 *ultra vires* fine is currently still in effect and generated more than \$9.6 million in profit for Suffolk County in 2014 alone.

B. Defendants charge Mr. McGrath an unauthorized \$30 administrative fee.

19. On December 1, 2015, Mr. McGrath was mailed a “Notice of Liability” under Suffolk’s red-light program. (Ex. A.) The notice provides the date of the alleged violation, the location of the alleged violation, the due date to make payment for the violation, and the statement: “Amount Due: \$80.” The “Notice of Liability” states that “The fine amount is \$50” and that “a \$30 Administrative Fee will be added for violations occurring on or after April 1, 2013.” (*Id.*)

20. Mr. McGrath challenged the ticket before the SCTPVA on February 3, 2016, and was found liable. That same day he paid Defendants \$80. He was informed by the judge that he had no right to an appeal unless he paid the \$80.

21. Plaintiff has complied with all conditions precedent to bringing this action, to the extent any apply, and notice of Plaintiff’s claim and intention to sue, specifically alleging the time, place and manner in which he was injured as alleged herein was duly served by said Plaintiff on Defendants.

C. Defendants Lack Authority to Require Owners to Pay \$80 per Violation Instead of \$50.

22. Defendants are without authority to increase the \$50 liability cap set by New York Vehicle and Traffic Law section 1111-b. But Defendants, in fact, increased the cap by mandating that owners who are found guilty or plead guilty to a violation pay a \$30 “administrative fee” or “driver responsibility fee” on top of the \$50 fine.

23. Black's Law Dictionary defines "liability" as "a financial or pecuniary obligation." Defendants' "Notice of Liability" states that the "Amount due: \$80.00". Defendants contravened the \$50 liability cap set by section 1111-b by requiring Plaintiffs and Class members to pay \$80 for each violation.

24. Referring the extra \$30 as an "administrative fee" instead of a fine or penalty (which is what it is) is simply form over substance and does not give Defendants authority to impose it.

25. As with any fine, the \$30 mandatory fee—which Defendants have also referred to as a "driver responsibility fee"—is imposed only on those who are found or plead guilty to running a red light. The fee thus serves as an automatic, flat monetary penalty i.e., a fine.

26. The \$30 fee also bears no relation to the cost of actually administering or processing a single individual's red-light ticket: among other things, Defendants' red-light program is provided at "No Cost to County," and their program vendor—Xerox—is "not entitled to be paid any percentage of any administrative fee charged by County."

V. CLASS ALLEGATIONS

27. Mr. McGrath brings this action on behalf of himself and a class ("the Class") of all others similarly situated, under CPLR § 901. The Class is defined as:

All persons who, between April 1, 2013 and the present, paid a \$30 administrative fee to Defendants, assessed pursuant to a violation of Defendants' red-light program. The Class does not include any driver who was ultimately refunded that fee, Defendants, or any judicial officer to whom this case is assigned.

28. Members of the Class are so numerous that joinder is impractical. 2014 data alone indicates that Class membership is in the hundreds of thousands.⁵

29. There are questions of law or fact common the class that predominate over any questions affecting only individual members, including, but not limited to: (1) whether Defendants exceeded the \$50 liability cap imposed by New York Vehicle and Traffic Law section 1111-b by imposing a \$30 fee on those who plead or are found guilty of a red-light-camera violation; (2) whether Defendants' imposition of the additional \$30 penalty is *ultra vires*, unconstitutional, or otherwise void; (3) whether it would be unjust or inequitable to allow Defendants to retain any unauthorized fines; and (4) whether the representations made in Defendants' red-light-program notice of liability—i.e., that Mr. McGrath and the Class owed the County \$80—were false.

30. Mr. McGrath's claims are typical of the Class's claims. Like the rest of the Class, Defendants assessed Mr. McGrath a \$30 administrative fee under their red-light program.

31. Mr. McGrath will fairly and adequately protect the interests of the class and he has retained counsel skilled in class action litigation.

32. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

33. Mr. McGrath reserves the right to expand, modify, or alter the Class definition in response to information learned during discovery.

VI. COUNTS

Count I

⁵ Suffolk County Red Light Safety Program 2014 Calendar Year Annual Report at 25 (listing as 321,009 as the the number of violations issued in 2014), [http://suffolkcountyny.gov/Portals/37/PDF/SC%20Red%20Light%20Safety%20Program%20Annual%20Report%202014.p](http://suffolkcountyny.gov/Portals/37/PDF/SC%20Red%20Light%20Safety%20Program%20Annual%20Report%202014.pdf)df.

Declaratory and injunctive relief under N.Y. CPLR 3001

34. Mr. McGrath incorporates the preceding paragraphs as if set forth fully herein.

35. On behalf of himself and the Class, Mr. McGrath seeks a declaratory judgment that Defendants' imposition of the \$30 "administrative fee" is unconstitutional.

36. New York's Vehicle and Traffic Law section 1111-b(e) caps an owner's liability at \$50 per violation, with the exception of a late fee. Defendants' imposition of the \$30 "administrative fee" makes Plaintiffs and class members liable for \$80 per violation. Because Defendants' fee is inconsistent with New York State's maximum penalty, the fee is inconsistent with New York's general law, or is otherwise *ultra vires*, preempted, unconstitutional, or void as a matter of law.

37. Mr. McGrath seeks injunctive relief prohibiting Suffolk or the SCTPVA from prospectively assessing \$30 "administrative fees" under its red-light program.

38. Mr. McGrath, on behalf of himself and the Class, also seeks retrospective injunctive relief requiring the County and SCTPVA to disgorge all administrative fees assessed under their red-light program.

Count II Unjust Enrichment

39. Mr. McGrath incorporates the preceding paragraphs as if set forth fully herein.

40. Mr. McGrath alleges that Defendants' retention of the \$30 administrative fees constituted unjust enrichment.

41. By paying Defendants their \$30 administrative fee, Mr. McGrath and the Class benefited Defendants at their own expense.

42. Because the \$30 administrative fee constituted an attempt by Defendants to raise revenues through unauthorized, ultra vires and/or unconstitutional means, equity and good conscience require restitution of the fee to Mr. McGrath and the Class.

Count III
Fraud

43. Mr. McGrath incorporates the preceding paragraphs as if set forth fully herein.

44. On behalf of himself and the Class, Mr. McGrath alleges that, by charging its \$30 administrative fee, Defendants committed common-law fraud.

45. As indicated in Exhibit A, Defendants' red-light-program "Notice of Liability," which was mailed to Mr. McGrath on December 1, 2015, indicates in the upper-right-hand corner of the first page that Mr. McGrath owes the county \$80. The first paragraph notes that this \$80 includes a \$30 "Administrative Fee." (*Id.*) This information is repeated in the third paragraph on the back of the notice. (*Id.* at 2.)

46. The upper-left-hand corner of the first page of the notice contains the words "Suffolk County, New York." (Ex. A at 1.) The second page notifies drivers that they can pay their fine, in person, at the SCTPVA. (*Id.* at 2.)

47. Plaintiff and class members were not liable for \$80 because New York's Vehicle and Traffic Law section 1111-b caps liability at \$50 and Defendant's representation that Plaintiff and the Class members were liable for \$80 for a red-light-camera violation was false.

48. Defendants' false representation was intentional. Defendants were aware that the \$30 "administrative fee" was in fact unauthorized, unconstitutional, and ultra vires, as evidenced by the fact that, among other things: (1) Suffolk agreed to assess the fee only against guilty owners and (2) Defendants implemented the fee in response to a fiscal crisis, indicating that they viewed the fine primarily as a revenue-generating tax or fine.

49. Mr. McGrath justifiably relied on representations in his notice of liability (Ex. A) indicating that he owed Defendants a valid administrative fee. Among other things, a reasonable citizen would believe statements made by their local government as to the legality of a charge.

50. Mr. McGrath was damaged by Defendants' fraud insofar as he paid \$80 instead of \$50 for the red camera violation as a result of the intentional misrepresentation

51. Accordingly, Mr. McGrath, on behalf of himself and the Class, seeks damages in the amount of the \$30 administrative fees paid by himself and the Class.

Count IV
Negligent Misrepresentation

52. Mr. McGrath incorporates the preceding paragraphs as if set forth fully herein.

53. Mr. McGrath alleges that Defendants committed negligent misrepresentation by indicating, in their red-light-program "Notices of Liability," that Mr. McGrath was liable to Defendants and owed Defendants \$80.

54. Defendants owed the public a duty to convey accurate information.

55. By indicating in their Notice of Liability that the amount due for the violation was \$80 when Plaintiff and class members were liable only for \$50, Defendants made a misrepresentation.

56. A reasonable actor would have been aware that the New York statute authorizing Suffolk's red-light program contained a \$50 liability cap, and that Defendants' attempt to avoid that cap via an administrative fee would violate that statute, or was otherwise unauthorized, unconstitutional, and void.

57. Mr. McGrath justifiably relied on representations in his notice of liability (Ex. A) indicating that he was liable to the County for \$80 for the violation. Among other things, a

reasonable citizen would believe statements made by their local government as to the legality of a charge.

58. Mr. McGrath was damaged by Defendants' negligent misrepresentation insofar as he paid \$80 instead of \$50 for the red-light-camera violation as a result of the misrepresentation.

59. Accordingly, Mr. McGrath, on behalf of himself and the Class, seeks damages in the amount of the \$30 administrative fees paid by himself and the Class.

VI. DEMAND FOR JUDGMENT

60. In light of the above, Mr. McGrath, on behalf of himself and the Class, demands judgment that:

- a. The Court determine that this action may be maintained as a class action under CPLR § 901, and direct that reasonable notice of this action be given to each and every member of the Class;
- b. Defendants' \$30 administrative fee alleged herein be adjudged and declared ultra vires, unconstitutional, preempted, void, or otherwise illegal;
- c. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or implementing the \$30 administrative fee in connection with the red light camera program or from adopting or following any practice, plan, program, or device having a similar purpose or effect;
- d. Defendants disgorge all sums collected via the \$30 administrative fee and pay restitution of such fees to Plaintiff and class members;
- e. Plaintiff and the members of the Class recover damages, to the maximum extent allowed under such law;
- f. Plaintiff and the members of the Class be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this Complaint;
- g. Plaintiff and the members of the Class recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

- h. Plaintiff and members of the Class have such other and further relief as the case may require and the Court may deem just and proper.

DATE: Lake Grove, NY
May 27, 2016

Respectfully submitted,



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VERIFICATION PAGE


STATE OF NEW YORK)
 :SS.:
COUNTY OF SUFFOLK)

Robert Mc Grath Jr , being duly sworn deposes and says:

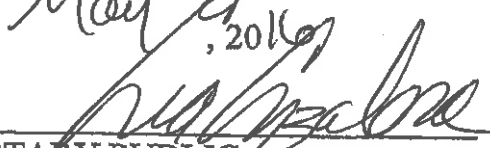
That I am the plaintiff in the within action; I have read the foregoing

Summons &
Verified Complaint

Know the contents thereof. That the same is true to my own knowledge, except as
to those matters to be alleged upon information and belief, and as to those matters,
I believe them to be true.


Robert Mc Grath

Sworn to before me this 27th day of
May, 2016


NOTARY PUBLIC

EVA ANZALONE
NOTARY PUBLIC, State of New York
No. 52-4667925
Qualified in Suffolk County
Commission Expires 1.31.2019