IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

2017CH10507
CALENDAR/ROOM 11
TIME 00:00
Class Action

RABBI AARON POTEK, ADINA KLEIN, and STEPHEN MICHELINI, as individuals and on behalf of those similarly situated,	)	**CLASS ACTION COMPLAINT**
Plaintiffs,	)	
v.	)	**Case No.**
CITY OF CHICAGO, a Municipal Corporation,	)	**JURY DEMAND**
Defendant.	)	

COMPLAINT

Plaintiffs Rabbi Aaron Potek, Adina Klein, and Stephen Michelini ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, complain against Defendant City of Chicago (the "City" or "Defendant") as follows:

INTRODUCTION

1. For years, the City of Chicago has illegally profited from ticketing alleged distracted drivers and then denying them their right to a day in court.

2. In 2009, the 96th General Assembly of Illinois enacted a statute that forbade the use of "electronic communications device[s]" while driving. *See* 625 ILCS 5/12-610.2 (P.A. 96-0130, eff. Jan. 1, 2010) (the "distracted driving statute" or "Statute").

3. Drivers who are convicted of violating the Illinois distracted driving statute are at risk of losing their driver's license. *See* 92 Ill. Adm. Code 1040.20. That is because every time a driver is convicted of violating the distracted driving statute, the clerk of the relevant traffic court is required by State law to report that violation to the Illinois Secretary of State. *See* 625 ILCS 5/6-204; 65 ILCS 5/1-2.1-2. The Secretary of State may then revoke or suspend a driver's license.

4. Because a convicted driver may lose his or her ability to drive, the Illinois distracted driving statute has a built-in failsafe: alleged violations must be tried in a State traffic court, before a judge, according to the Rules of Procedure and Rules of Evidence adopted by the Illinois General Assembly. 65 ILCS 5/1-2.1-2. By requiring that distracted driving offenses be adjudicated in a State court, Illinois law literally guarantees that individuals accused of distracted driving get their day in court. More than that, they are entitled to a day in a court presided over by a sworn judge bound by the Rules of Evidence and Rules of Procedure.

5. Under the Illinois Constitution, municipalities like the City have the right to pass their own distracted driving ordinances. Indeed, the Chicago City Council passed a distracted driving ordinance in 2005 and continuously amended it thereafter. *See* Municipal Code of Chicago ("MCC") § 9-76-230 (first enacted as § 9-40-260) (the "distracted driving ordinance" or "Ordinance").

6. However, if a municipality's distracted driving ordinance is similar to the distracted driving statute, then any alleged ordinance offense must be prosecuted in State traffic court in the same manner as an alleged offense of the Statute. 65 ILCS 5/1-2.1-2. The reason for this requirement is clear: persons who are accused of distracted driving inside Chicago should have the same rights to defend themselves as people facing the same accusation outside of Chicago.

7. Since January 1, 2010, the Ordinance and the Statute have been substantively similar in every respect. Therefore, the City was required by Illinois law to prosecute offenses of the Ordinance in State traffic court.

8. But the City never followed the law. Instead, it purposefully circumvented the Illinois statutory scheme for prosecuting alleged distracted driving offenses and reporting offenders. Rather than send alleged Ordinance violators to State traffic court, the City misrouted

allegedly distracted drivers to the City's private "administrative" justice system. The reason was simple: money.

9. For years, the City of Chicago has operated a private court system, called the Department of Administrative Hearings ("DOAH"), that it funds and controls. In this so-called "administrative" system, a driver's guilt or innocence is determined by an unelected "administrative law officer" who is literally on the City's payroll. During these so-called hearings, the rules of evidence do not apply. *See* MCC § 9-100-080(c). Accused drivers have no right to cross-examine the police officer who, in almost every case, is the only complaining witness. *See* MCC § 9-100-030(a). Incredibly, under the City's private rules of justice, the ticket itself is *prima facie* evidence of guilt, even without any corroborating video or other evidence. *See* MCC § 9-100-070(c); MCC § 9-100-080(e). In other words, an accusation of guilt is proof of guilt even without the testimony of the accuser. With the deck thus stacked in its favor, the City can't lose.

10. There was another reason for the City to funnel alleged Ordinance violators into its private courts rather than into State traffic court. When a driver pleads guilty to a traffic offense in State traffic court instead of contesting the ticket, the City must split the proceeds with the State and County. *See* Ill. S. Ct. R. 529 (eff. Dec. 7, 2011). In fact, the State and County receive the majority of the revenue of fines paid in traffic court – a combined total of 55.5 percent – while the City receives only 44.5 percent. *Id.* But when a driver is found guilty in the City's private system of justice, the City keeps every cent of the fine that results. By illegally prosecuting alleged distracted drivers through its administrative system, the City not only stacks the deck in its favor, it keeps all the winnings too.

11. Under Illinois law, the City's DOAH lacked any jurisdiction over Plaintiffs and those similarly situated and, therefore, the fines wrongly levied against them are null and void *ab*

initio. Plaintiffs, and those like them, were deprived of their right to mount a full defense in a true court of law. Plaintiffs bring this action to challenge these illegal practices and to require the City to disgorge the money it has wrongly collected through them.

PARTIES

12. Plaintiff Rabbi Aaron Potek is an individual who resided in Cook County, Illinois when he received an Administrative Notice of Ordinance Violation for allegedly violating the Ordinance on September 8, 2014. He paid a $100 fine on October 24, 2014.

13. Plaintiff Adina Klein is an individual who resides in Cook County, Illinois and who received an Administrative Notice of Ordinance Violation for allegedly violating the Ordinance on August 5, 2014. She paid a $90 fine, plus a $20 administration fee, on September 8, 2014.

14. Plaintiff Stephen Michelini is an individual who resides in Cook County, Illinois and who received an Administrative Notice of Ordinance Violation for allegedly violating the Ordinance on August 10, 2014. He paid a $100 fine on August 23, 2014.

15. Defendant City of Chicago is an Illinois Municipal Corporation.

JURISDICTION AND VENUE

16. Jurisdiction is proper pursuant to 735 ILCS 5/2-209(a)(1) and (c) and venue is proper pursuant to 735 ILCS 5/2-101 because Plaintiffs are, or were at the relevant time, residents of Cook County, Illinois, Defendant is the City of Chicago, and the events and transactions giving rise to the claims asserted herein occurred in Cook County, Illinois.

FACTUAL ALLEGATIONS

The Reporting Requirement

A. If a violation of an Illinois road safety statue must be reported to the Secretary of State, then a violation of any "similar" municipal ordinance must also be reported.

17. Illinois is a modified "point system" State that suspends or revokes a driver's license when that driver accumulates enough violation "points," commits certain enumerated offenses, or commits any three moving violations in a 12-month period. *See generally* 92 Ill. Adm. Code 1040.20 *and* 625 ILCS 5/6-206(a). In order for this system to function, court systems around the State are required to report vehicle-related offenses to the Secretary of State, who is charged with keeping track and suspending, revoking, or canceling a driver's license when appropriate. *See generally* 625 ILCS 5/6-206.

18. The Illinois Vehicle Code (the "IVC") defines what offenses must be reported to the Secretary of State:

> Whenever any person is convicted of any offense under this Code *or similar offenses under a municipal ordinance*, ... it shall be the duty of the clerk of the court in which such conviction is had within 5 days thereafter to forward to the Secretary of State a report of the conviction and the court may recommend the suspension of the driver's license or permit of the person so convicted.

625 ILCS 5/6-204(a)(2) (emphasis added). In other words, whenever the IVC or any local ordinance "similar" to a provision of the IVC is violated, that offense must be reported to the Secretary of State.

19. The Statute is undoubtedly included among the offenses that must be reported to the Secretary of State. *See, e.g.* 92 Ill. Adm. Code 1040.20 (Secretary of State "Offense Table" that includes the Statute as a reportable offense). Therefore, every time a driver violates the Statute, that offense is reported to the Secretary of State.

20. In order to enforce the Illinois point system completely and fairly throughout the State, any violation of a municipal ordinance that is "similar" to a State statute must also be reported to the Secretary of State. 625 ILCS 5/6-204(a)(2). If "similar" municipal offenses are not reported, drivers who violate a State statute would be at risk of losing their license, but drivers who violate a municipal ordinance would not, even when their conduct was identical.

B. The Ordinance and Statute are similar offenses.

21. The Statute and the Ordinance undeniably prohibit similar conduct, with similar exceptions, for similar purposes.[1]

22. The Statute was explicitly enacted with the intent of protecting people on Illinois roads. *See, e.g.* 96th Ill. Gen. Assem., House Proceedings, Apr. 1, 2009 (statements of Representative Black). Likewise, the Ordinance was passed with the purpose of safeguarding the people of Chicago while on the public way. *See, e.g.* Coun. J. May 11, 2005, p. 49147 (Ordinance intended to remedy a "proven hazard to public safety").

23. Given the similar purpose of the Statute and the Ordinance, it is inconceivable that a person who violates the Statute should be reported to the Secretary of State, but a person who violates the Ordinance should not be. Advancing the purpose of both laws – public safety – requires equal and uniform reporting of violations of both the Statute and the Ordinance.

24. The Statute and the Ordinance are also similar in their structure and overall design. For example, the conduct that both laws prohibit – and the exemptions they carve out – have remained similar throughout their legislative history.

[1] "Similar" is defined as "Resembling, though not completely identical." WEBSTER'S NEW COLLEGE DICTIONARY 1053 (3d ed. 2008).

25. For example, from January 1, 2014 to the present day, the Statute and the Ordinance have been more than just similar to each other in terms of the conduct they prohibit – they have been identical.

Similar Prohibition, January 1, 2014 – Present Day

The Statute	The Ordinance
"A person may not operate a motor vehicle on a roadway while using an electronic communication device."	"[N]o person shall drive a motor vehicle while using a mobile, cellular, analog wireless or digital telephone."
625 ILCS 5/12-610.2(b) (eff. Jan. 1, 2014).	MCC § 9-40-260(a) (eff. May 11, 2005); MCC § 9-76-230(a) (eff. Nov. 5, 2008).

26. Undoubtedly, the Statute and the Ordinance prohibit the same conduct as each other. Any person who violates the Statute violates the Ordinance, and vice versa. It would be absurd to report violators of one law, but not report violators of the other.

27. From January 1, 2010 to January 1, 2014, the Statute and the Ordinance were also similar in the conduct they each prohibited.

Similar Prohibition, January 1, 2010 – January 1, 2014

The Statute	The Ordinance
"A person may not operate a motor vehicle on a roadway while using an electronic communication device to compose, send, or read an electronic message."	"[N]o person shall drive a motor vehicle while using a mobile, cellular, analog wireless or digital telephone."
625 ILCS 5/12-610.2(b) (eff. Jan. 1, 2014).	MCC § 9-40-260(a) (eff. May 11, 2005); MCC § 9-76-230(a) (eff. Nov. 5, 2008).

28. Here, the only difference is that the Statute applies specifically to "compos[ing], send[ing], or read[ing] an electronic message." 625 ILCS 5/12-610.2(b). In every single case, then, a violation of the Statute would constitute a violation of the Ordinance. The two laws are

remarkably similar and it would be absurd for violators of the Statute to be subject to license suspension or revocation while violators of the Ordinance were not.

29. The Statute and the Ordinance are not only similar in what they prohibit. They are also similar in the exemptions they carve out. From January 1, 2010 to the present day, the Statute and the Ordinance have contained the following exemptions:

Similar Exemptions

The Statute	The Ordinance
(b) This Section does not apply to:	(c) The provisions of this section shall not apply to:
(1) a law enforcement officer or operator of an emergency vehicle while performing his or her official duties;	(1) Law enforcement officers and operators of emergency vehicles, when on duty and acting in their official capacities.
(2) a driver using an electronic communication device for the sole purpose of reporting an emergency situation and continued communication with emergency personnel during the emergency situation;	(2) Persons using a telephone with a "hands free" device allowing the driver to talk into and listen to the other party without the use of hands.
(3) a driver using an electronic communication device in hands-free or voice-operated mode, which may include the use of a headset;	(3) Persons using a telephone to call 911 telephone numbers or other emergency telephone numbers to contact public safety forces.
. . .	
(5) a driver using an electronic communication device while parked on the shoulder of a roadway[.]	(4) Persons using a telephone while maintaining a motor vehicle in a stationary parked position, and not in gear.
625 ILCS 5/12-610.2 (eff. Jan. 1, 2010).	MCC § 9-40-260 (eff. May 11, 2005); MCC § 9-76-230 (eff. Nov. 5, 2008).

30. Clearly, these exceptions match each other point for point. All of the exceptions that appear in the Ordinance also appear in the Statute. In every situation where a person is exempted from the Ordinance, that person would also be exempted from the Statute.[2]

31. Undoubtedly, the Statute and the Ordinance are similar in purpose, design, and structure. Because of this similarity, 625 ILCS 5/6-204(a)(2) required that violations of the Ordinance be adjudicated in a State traffic court and reported to the Secretary of State in the same manner as violations of the Statute.

32. Nevertheless, the City circumvented the reporting process by sending Ordinance violators to its private administrative courts rather than State traffic courts. In the City's administrative courts, accused drivers were unable to cross-examine their accusers or seek a ruling from a sworn judge. In other words, alleged violators of the City Ordinance were illegally deprived of procedural rights that were afforded to violators of the Statute.

C. The City was required to send Ordinance violations to State traffic court. It didn't.

33. Illinois law plainly states that when a municipal violation must be reported to the Secretary of State, the alleged offense must be tried in a State traffic court, and *not* in the municipality's administrative system:

> Administrative adjudication of municipal code violations. Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, *except* for (i) proceedings not within the statutory or the home rule authority of municipalities; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles *and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code.*

[2] Similarly, the other exemptions in the Statute (like exemptions for use of two-way radios or dispatch systems) exempt conduct that would not be punishable under the Ordinance, which only reaches mobile telephones. *See, e.g.* 625 ILCS 5/12-610.2(d)(6)-(10).

625 ILCS 5/1-2.1-2 (emphases added).

34. In other words, the City may adjudicate violations in its private administrative system, but never when the violation is a "reportable" one. The Ordinance was a reportable offense because it is "similar" to the Statute pursuant to 625 ILCS 5/6-204(a)(2).

35. It is easy to understand why 625 ILCS 5/1-2.1-2 requires that reportable offenses like the Ordinance are sent to State court. That is because the clerks of those courts are equipped to report violators to the Secretary of State. Further, because violators are reported to the Secretary of State, their driver's licenses are placed in jeopardy and additional procedural safeguards are necessary. *See, e.g.* 96th Ill. Gen. Assem., House Proceedings, Apr. 1, 2009 (statements of Representative Mathias).

36. Accordingly, the three parts of Illinois's statutory scheme are clear. First, 625 ILCS 5/12-610.2 (the Statute) makes distracted driving illegal throughout the State. Second, 625 ILCS 5/6-204 requires that the Statute and all similar municipal ordinances be reported to the Secretary of State. Third, 625 ILCS 5/1-2.1-2 forbids municipalities like the City from adjudicating violations of ordinances that are similar to State road safety laws in their administrative courts. Instead, alleged violations of those similar ordinances must be tried in State traffic court where accused drivers are afforded uniform procedural rights and so those convicted are duly reported to the Secretary of State. Therefore, Illinois law forbade the City from adjudicating alleged Ordinance violations in its administrative courts.

37. The City purposefully circumvented this statutory scheme in order to maximize revenue. Instead of trying alleged Ordinance violations in State traffic court, the City funneled them into its private administrative system. That way, the City benefited by stacking the evidentiary and procedural deck in its favor. When the inevitable occurred and the accused driver

was convicted, the City was able to keep 100% of the fine instead of splitting the proceeds with Cook County and the State of Illinois, as they would have had to if the violations were appropriately brought in a State court. Meanwhile, the Secretary of State received no reports of Ordinance violations from the City's administrative courts.

38. It is clear that the City knew full well that the law required "reportable" Ordinance violations to be tried in State traffic court rather than the City's private administrative courts. Indeed, in 2008, the City's own Ordinance was amended to acknowledge this very requirement:

> If any violation of this section is subject to the reporting requirements of Section 6-204 of the Illinois Vehicle Code, as amended, such violation shall be deemed not to be a compliance violation ... and the corporation counsel shall institute appropriate proceedings in a court of competent jurisdiction to prosecute such violation.

MCC § 9-76-230(d) (eff. Nov. 5, 2008).[3]

39. Clearly, the City knew in 2008 that amendments to the IVC might require the City to begin trying Ordinance violations in State court so that violators could be properly reported. As shown above, the Illinois Generally Assembly did indeed amend the IVC to enact the Statute effective January 1, 2010. And, as the Ordinance itself predicted, the enactment of the Statute made the Ordinance "subject to the reporting requirements" of the IVC.

40. In an apparent effort to disguise this requirement and conceal its illegal practices, the City quietly deleted paragraph (d) from the Ordinance on October 28, 2015. *See* Coun. J. Oct. 28, 2015, p. 12044, Art. X § 12. No public explanation for the deletion was offered. In other words, instead of coming clean about its failure to follow the law, the City sought to bury the evidence of its wrongdoing in the dusty annals of the City Council Journal.

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[3] In this context, a "compliance violation" is a violation that, along with parking, red light camera, and speed camera violations, can be adjudicated in the City's administrative system. *See* MCC § 9-100-010, *et seq*. If an offense is not a compliance violation, it cannot be tried in the DOAH.

41. As a result of the City's knowing circumvention of our State's system for adjudicating distracted driving offenses, Plaintiffs were deprived of their right of a true day in court before a sworn judge. Meanwhile, the City was able to route them into private courts designed to favor the City – and pocket 100% of the revenue that resulted.

The Moving Violation Requirement

D. Violations of the Ordinance were required to be adjudicated in State traffic court because they were moving violations.

42. It was not only illegal for the City to try Ordinance violations in its private court system because those violations were "reportable." The City's circumvention of State traffic court was also illegal for the independent reason that under Illinois law, all moving violations must be tried in a competent State court in order to guarantee a just and lawful outcome. And the Ordinance is plainly a moving violation.

43. Pursuant to 65 ILCS 5/1-2.1-2, no municipal offense similar to a statewide offense may be tried administratively when the conduct the laws prohibit constitutes a moving violation. The law states:

> Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, except for ... any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation *governing the movement of vehicles*[.]

65 ILCS 5/1-2.1-2 (emphasis added). In sum, Illinois law provides that while the City may create "a system of administrative adjudication," moving violations are excluded from that system.

44. By its plain language, the Ordinance is a moving violation. The Ordinance states that "no person shall *drive* a motor vehicle while using" a cell phone. *See* MCC § 9-40-260(a) (eff. May 11, 2005); MCC § 9-76-230(a) (eff. Nov. 5, 2008) (emphasis added). Driving a vehicle

necessarily means the movement of a vehicle. Thus, the Ordinance plainly relates to the movement of a vehicle.

45. Furthermore, the Ordinance plainly permits the use of a cellular phone when a vehicle is not moving. In the words of the Ordinance, "[p]ersons using a telephone while maintaining a motor vehicle in a stationary parked position, and not in gear" have not committed a violation. MCC § 9-76-230(b). If you're not moving, you're not in violation. Throughout its history, therefore, the Ordinance has plainly described a moving violation.

46. Like the Ordinance, the Illinois distracted driver Statute is also a moving violation. Indeed, from January 1, 2010 to January 1, 2014, the Statute explicitly stated that "a violation of this Section is an offense against traffic regulations governing the movement of vehicles." 625 ILCS 5/12-610.2(c). Accordingly, from at least 2010 to 2014, Illinois law preempted the City from treating the Ordinance as anything other than a moving violation. For this separate and independent reason, the City was required to prosecute violations of the Ordinance as moving violations in a competent State court.

47. Despite the fact that the plain language of the Ordinance describes a moving violation and the Illinois General Assembly has determined that distracted driving is a moving violation throughout our State, the City refused to prosecute Ordinance violators in State court as required for all moving violations. Instead, the City prosecuted all alleged distracted driving offenses in its private administrative system, where it could keep all the revenue the Ordinance tickets generated.

The City's Private Administrative System Lacked Jurisdiction over Plaintiffs

E. The administrative system that the City sent Ordinance violations to lacked jurisdiction over the Plaintiffs.

48. Plaintiffs in this case were all cited for violations of the Ordinance and prosecuted in the City's private administrative courts. However, because the Ordinance violations were "reportable" to the Secretary of State and separately because they were moving violations, Illinois law forbade the City from adjudicating Plaintiffs' alleged offenses in its administrative system.

49. Under Illinois law, no administrative system, including the City's private administrative courts, may exceed its lawful grant of authority. Whenever an administrative body contravenes Illinois law or otherwise exceeds its authority, that act is null and void *ab initio*.

50. In this case, the City's private administrative courts lacked jurisdiction to adjudicate Ordinance violations and acted illegally every time they entered a judgment against an alleged Ordinance violator, accepted a plea of guilty, collected monies, or otherwise adjudicated an alleged violation. Accordingly, each of these acts by the City was void *ab initio*.

51. Despite the illegality of the City's conduct, Plaintiffs literally had no choice but to appear and pay their fines. If they did not, the City would garnish their wages, initiate collection actions, and report Plaintiffs to credit reporting bureaus. Indeed, the City explicitly warned of these consequences in text that appeared on the Administrative Notice of Ordinance Violations ("ANOVs") issued to Plaintiffs. The ANOVs further cautioned Plaintiffs that if they failed to pay in a timely fashion, they would be assessed additional court costs and attorneys' fees.

52. The ANOVs also threatened Plaintiffs with higher fines if they dared to contest the allegations against them in a hearing. Specifically, the ANOVs promised that if Plaintiffs paid the City within seven days of receipt of their tickets, they need only pay $100. If they waited until the date of their administrative hearing, however, Plaintiffs would be fined up to $500. In the case of

Rabbi Potek, the ANOV was issued September 8, 2014, but his administrative hearing was not set until October 24, 2014 – well past the seven-day deadline. With these perverse incentives, the City further pressured Plaintiffs into compliance.

53. In addition to the risk of higher fees, Plaintiffs also faced the loss of their drivers' licenses unless they submitted to the City's demands. If Plaintiffs did not respond to the ANOV, their drivers' licenses would be suspended until the DOAH requested that the Secretary of State reinstate them. 625 ILCS 5/6-308. If Plaintiffs responded to the ANOV, but failed to pay, the Illinois Secretary of State would, at the request of the DOAH, refuse to renew their drivers' licenses until the DOAH was satisfied. 625 ILCS 5/6-306.6. Accordingly, Plaintiffs were forced to appear before a "court" that had no jurisdiction over them and then submit to whatever fines that "court" assessed on pain of elevated fines and the loss of their license to drive.

54. Each of the Plaintiffs complied with the City's illegal demands because they required their drivers' licenses to travel to work and/or manage their daily affairs and further because they feared being assessed additional fines and fees if they failed to submit.

55. On behalf of themselves and all individuals similarly situated, Plaintiffs now petition the Circuit Court of Cook County for an order declaring that the judgments entered against them related to alleged violations of the Ordinance, and all fines and other amounts assessed in connection therewith, are void *ab initio* and for the equitable return of all monies unjustly collected by the City pursuant to those void judgments.

56. Plaintiffs further request that the Court enter an injunctive order requiring the City in the future to prosecute all alleged Ordinance offenses in a court of competent jurisdiction.

CLASS ALLEGATIONS

57. Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure on behalf of a class similarly situated individuals defined as follows:

> All individuals who, from the period of January 1, 2010 to the present day, were found liable for a violation of § 9-76-230 of the Municipal Code of the City of Chicago by the City of Chicago Department of Administrative Hearings (the "Class").

58. The members of the Class are so numerous that joinder of all members is impracticable. Based on investigation by Plaintiffs' counsel and publicly available information concerning the volume of alleged Ordinance violations between January 1, 2010 and the present day, it is estimated the class will comprise many tens of thousands of members. The exact number of members of the Class can be determined from records maintained by the City.

59. Common questions of law and fact exist as to the Class, including:

a. Whether administrative judgments entered by the City concerning Ordinance violations are void *ab initio* because an alleged violation of the Ordinance is a "reportable" offense that must be tried in a circuit court of the State of Illinois pursuant to 65 ILCS 5/1-2.1-2;

b. Whether administrative judgments entered by the City concerning Ordinance violations are void *ab initio* because an alleged violation of the Ordinance is a moving violation that must be tried in a circuit court of the State of Illinois pursuant to pursuant to 65 ILCS 5/1-2.1-2;

c. Whether it was unjust for the City to retain fines and penalties for alleged Ordinance violations when those fines and penalties were paid pursuant to administrative judgments that are void *ab initio*;

d. Whether the City's retention of the benefit of these illegal fines and penalties violates the fundamental principles of justice, equity, and good conscience.

60. These common questions predominate over any questions, should they exist at all, that solely affect individual class members.

61. Plaintiffs will fairly and adequately protect the interests of class members. Plaintiffs have retained competent counsel experienced in class action litigation in state and federal courts. Plaintiffs have no interest adverse to any class members. Plaintiffs intend to prosecute this case vigorously on behalf of themselves and the class members.

62. A class action is an appropriate method for the fair and efficient adjudication of this controversy because it involves the legality of administrative judgments that apply equally to all Plaintiffs and class members. A class action can therefore best secure the economies of time, effort, and expense while accomplishing the ends of law and equity that this action seeks to achieve.

COUNT I
On behalf of Plaintiffs and the Class
Declaratory and Injunctive Relief

63. Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

64. Pursuant to 735 ILCS 5/2-701(a), this Court may "make binding declarations of rights, having the force of final judgments ... including the determination ... of the construction of any statute, municipal ordinance, or other governmental regulation ... and a declaration of the rights of the parties interested." Such a declaration of rights "may be obtained ... as incident to or part of a complaint ... seeking other relief as well." 735 ILCS 5/2-701(b).

65. Plaintiffs seek a judgment declaring that all administrative findings of liability pursuant to the Ordinance are null and void *ab initio* and declaring that any fines, penalties or other amounts stemming from those void administrative finding are similarly void.

66. Plaintiffs have a personal claim which is capable of being affected. As detailed above, this case presents an actual controversy that requires an immediate and definitive determination of the parties' rights.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order declaring that all administrative findings of liability pursuant to the Ordinance from January 1, 2010 to the present day, and all fines and other amounts assessed in connection therewith, are null and void *ab initio*, and that all such fines and other amounts be returned to Plaintiffs and class members. Further, Plaintiffs request that this Court enter a preliminary and permanent injunctive order forbidding the City from adjudicating any alleged violation of the Ordinance in the City's administrative courts and grant an award of reasonable attorneys' fees, expenses, and costs.

COUNT II
On behalf of Plaintiffs and the Class
Unjust Enrichment

67. Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

68. The City has demanded and received fines and penalties from Plaintiffs and other class members for alleged Ordinance violations that were illegally adjudicated in administrative courts that lacked jurisdiction.

69. Despite this fatal deficiency, the City has collected fines and penalties from Plaintiffs and class members to which it was not entitled. The City knowingly appreciated and accepted this benefit, which has resulted and continues to result in an inequity to Plaintiffs and members of the Class.

70. The City has thus unjustly received and retained a benefit belonging to Plaintiffs and class members, who have therefore suffered a commensurate detriment.

71. The City's retention of this benefit violates the fundamental principles of justice, equity and good conscience.

WHEREFORE, Plaintiffs respectfully request that this Court award Plaintiffs and class members an amount equal to all fines and other amounts collected or otherwise received by the City for alleged violations of the Ordinance that were prosecuted through the DOAH from January 1, 2010 to the present day, including pre- and post-judgment interest, and further grant an award of reasonable attorneys' fees, expenses, and costs.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues that may be tried and decided by jury.

Dated: August 1, 2017

Respectfully submitted,

By: _____
One of Plaintiffs' Attorneys

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