

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

<p>KAREN M. MURPHY, on behalf of herself and others similarly situated,    Plaintiff,  v.  CITY OF MARKHAM,    Defendant.</p>	<p>No. _____  CLASS ACTION COMPLAINT  JURY TRIAL DEMANDED</p>
---	---

**CLASS ACTION COMPLAINT**

Plaintiff Karen M. Murphy ("Plaintiff"), for herself and for all others similarly situated, by and through her attorneys, Krislov & Associates, Ltd., brings this claim as a class action against Defendant City of Markham ("Defendant" or the "City"), and in support thereof, upon personal knowledge as to herself and upon information and belief as to all other matters, alleges the following:

**I. NATURE OF THE ACTION**

1. This is a class action arising from Defendant's unlawful collection of money from vehicle owners through its Photo Enforcement Program. Defendant has been issuing red light violation notices and collecting fines and late fees despite its failure to comply with two mandatory provisions of the state law governing red light cameras. First, Defendant has failed to publish on its website the location of all red light cameras within the City. Second, Defendant has failed to make available to the public and publish on its website a statistical analysis assessing the safety impact of each red light camera within its boundaries. Because Defendant has failed to comply with these two mandatory provisions, the violation notices it has issued are void and the fines and fees it collected

must be returned. As such, Plaintiff and members of the putative class she seeks to represent are entitled to declaratory relief in order to avoid Defendant's unjust enrichment.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction under the Illinois Code of Civil Procedure, 735 ILCS 5/2-209(a)(1), because Defendant transacts business within this state.

3. Venue is proper in this county under the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, as it is the county in which the transaction or some part thereof occurred out of which the cause of action arose.

## III. PARTIES

4. Plaintiff Karen M. Murphy is a citizen of the State of Illinois and resides in Orland Park, Illinois. She received a violation notice from a red light camera operated by Defendant at the intersection of 159th Street and Pulaski Road in the City and paid Defendant \$103.50.

5. Defendant is an Illinois municipal corporation located in Cook County, Illinois.

## IV. FACTUAL ALLEGATIONS

6. As part of its Photo Enforcement Program, Defendant has installed automated cameras at certain intersections within the City. The cameras take pictures of vehicles that enter the intersections against red lights, and Defendant or its agents use images of the license plates of the vehicles to send their owners violation notices. The violation notice requires vehicle owners to either pay a \$100 fine or contest the violation

ELECTRONICALLY FILED  
11/7/2017 4:35 PM  
2017-CH-14834  
PAGE 2 of 9

by mail or in person. Alleged violators are fined an additional \$100 if they do not pay or contest the violation within 14 days.

7. The Illinois Vehicle Code, which authorizes certain municipalities and counties to operate an “automated traffic law enforcement device,” requires the following:

A municipality or county that has one or more intersections equipped with an automated traffic law enforcement system must provide notice to drivers by posting the locations of automated traffic law systems on the municipality or county website.

625 ILCS 5/11-208.6.

8. Defendant operates a website, cityofmarkham.net, and that website has a link for “Red Light Enforcement.” However, clicking on the link takes visitors to a “404 Error” page which states “Apologies, but the page you’re looking for can’t be found.” That is, Defendant has failed to provide notice on its website to drivers of the locations of its red light cameras as mandated by state law.

9. The state statute additionally requires the following:

A municipality or county operating an automated traffic law enforcement system shall conduct a statistical analysis to assess the safety impact of each automated traffic law enforcement system at an intersection following installation of the system. The statistical analysis shall be based upon the best available crash, traffic, and other data, and shall cover a period of time before and after installation of the system sufficient to provide a statistically valid comparison of safety impact. The statistical analysis shall be consistent with professional judgment and acceptable industry practice. The statistical analysis also shall be consistent with the data required for valid comparisons of before and after conditions and shall be conducted within a reasonable period following the installation of the automated traffic law enforcement system. The statistical analysis required by this subsection (k-7) shall be made available to the public and shall be published on the website of the municipality or county. If the statistical analysis for the 36 month period following installation of the system indicates that there has

been an increase in the rate of accidents at the approach to the intersection monitored by the system, the municipality or county shall undertake additional studies to determine the cause and severity of the accidents, and may take any action that it determines is necessary or appropriate to reduce the number or severity of the accidents at that intersection.

625 ILCS 5/11-208.6

10. There is no indication that Defendant has conducted the statistical analysis as required by statute. No such study appears anywhere on the City of Markham website. Therefore, Defendant has failed to share with the public and publish on its website the statistical analysis as required by state law.

11. Plaintiff received a violation notice from a red light camera operated by Defendant at the intersection of 159th Street and Pulaski Road in the City in April 2016. She paid the \$100 fine, plus a credit card convenience fee of \$3.50, on April 28, 2016. Plaintiff paid the \$100 fine, in part, to avoid having to pay an additional \$100 fine for not responding to the notice of violation within 14 days.

#### V. CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action individually and as a class action pursuant to 735 ILCS 5/2-801 *et seq.*, on behalf of the following class:

All individuals and entities who have been issued red light tickets from the City of Markham.

Excluded from the class is Defendant; the officers, directors and employees of Defendant; any entity in which Defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendant; any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

ELECTRONICALLY FILED  
11/7/2017 4:35 PM  
2017-CH-14834  
PAGE 4 of 9

ELECTRONICALLY FILED  
11/7/2017 4:35 PM  
2017-CH-14834  
PAGE 5 of 9

13. **Numerosity.** Upon information and belief, the members of the class are so numerous that their individual joinder would be impracticable.

14. **Commonality.** There are numerous questions of law and fact that are common to Plaintiff and all members of the class, including, but not limited to the following:

- a) Whether Defendant issued void red light tickets and unlawfully collected fines and fees from vehicle owners;
- b) whether Plaintiff is entitled to a declaratory judgment stating that the red light tickets issued by Defendant are void;
- c) whether Defendant has been unjustly enriched;
- d) whether Plaintiff and class members have suffered damages; and
- e) whether Plaintiff and class members are entitled to equitable relief.

15. **Typicality.** Plaintiff is a member of the class and has claims that are typical of all members of the class. Plaintiff's claims and all of the class members' claims arise out of the same uniform course of conduct by Defendant and may be remedied under the same legal theories.

16. **Adequacy.** Plaintiff will fairly and adequately represent the interests of the members of the class. Plaintiff has no conflicts of interest with, or interests that are any different from, those of the other class members. Plaintiff has retained competent counsel experienced in class action and other complex litigation.

17. **Predominance.** Common questions of law and fact predominate over questions affecting only individual class members, and the court, as well as the parties, will spend the vast majority of their time working to resolve these common issues.

ELECTRONICALLY FILED  
11/7/2017 4:35 PM  
2017-CH-14834  
PAGE 6 of 9

18. **Superiority.** A class action is superior to all other feasible alternatives for the resolution of this matter. Individual litigation of multiple cases would be highly inefficient, a gross waste of the resources of the court and of the parties, and potentially could lead to inconsistent results that would be contrary to the interests of justice.

19. **Manageability.** This case is well suited for treatment as a class action and can easily be managed as a class action because evidence of both liability and damages can be adduced, and proof of liability and damages can be presented, on a class-wide basis, while the allocation and distribution of damages to class members would be essentially a ministerial function.

20. Defendant has acted on grounds generally applicable to Plaintiff and class members by uniformly, unlawfully collecting money from them. Accordingly, injunctive relief, as well as legal and/or equitable monetary relief (such as disgorgement and/or restitution), along with corresponding declaratory relief, are appropriate with respect to the class as a whole.

**VI. CAUSES OF ACTION**

**COUNT I**  
**Declaratory Judgment**

21. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

22. At all relevant times there was in full force and effect the Illinois Declaratory Judgment Act, 735 ILCS 5/2-701. Section 5/2-701(a) provides, in relevant part, that “The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments...including a...determination of the rights of interested parties.” 735 ILCS 5/2-701(a).

ELECTRONICALLY FILED  
11/7/2017 4:35 PM  
2017-CH-14834  
PAGE 7 of 9

23. Plaintiff is seeking a determination that the red light violation notices issued by Defendant are void, and that all fines, convenience fees and late fees collected should be returned. The violation notices are void because Defendant has failed to comply with mandatory provisions of the Illinois Vehicle Code.

24. Plaintiff has a legally tangible interest in her property, in the form of money paid to Defendant when she was issued a void red light ticket, and has an interest in being free from receiving further void violation notices from Defendant in the future.

25. Defendant is opposed to Plaintiff's interests because it has issued void red light tickets and unlawfully collected money from Plaintiff and other members of the putative class, and continues to issue void red light tickets and unlawfully collect money from other vehicle owners.

26. An actual controversy exists between the parties because Defendant issued void red light tickets and unlawfully collected money from Plaintiff, and continues to issue void red light tickets and unlawfully collect money from other vehicle owners.

**COUNT II**  
**Unjust Enrichment**

27. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

28. Defendant has been enriched and has benefitted from its unlawful collection of fines and fees from vehicle owners issued void red light tickets.

29. As a result of this unlawful conduct, Defendant has been unjustly enriched at the expense of Plaintiff and members of the class she seeks to represent.

30. It would be inequitable and unconscionable for Defendant to retain the profit, benefit and other compensation it obtained from the unlawful conduct described herein.

#### **VII. JURY DEMAND**

31. Plaintiff and members of the class request a jury trial.

#### **VIII. PRAYER FOR RELIEF**

32. Plaintiff, for herself and for all members of the class, respectfully requests that this Court:

- a) Certify the class as requested herein, appoint Plaintiff as Class Representative and her selection of counsel as Class Counsel, and order class-wide relief;
- b) Adjudge and decree that Defendant has engaged in the conduct alleged herein;
- c) Enjoin and restrain Defendant and its officers and agents from continuing or engaging in similar conduct as alleged herein;
- d) Order that Defendant pay restitution to Plaintiff and the class which would restore Plaintiff and the class to the financial position they would have been in absent Defendant's unlawful conduct;
- e) Order that Defendant pay any statutory damages as a result of its unlawful conduct;
- f) Order that Defendant pay any compensatory damages as a result of its unlawful conduct;
- g) Order that Defendant pay punitive damages as a result of its unlawful conduct;
- h) Order that Defendant pay interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;
- i) Order Defendant to identify victims of its unlawful conduct;
- j) Order that Defendant is financially responsible for notifying all members of the class of the unlawful conduct set forth herein;



- k) Award attorneys' fees, expenses, and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action; and
- l) Grant all other such relief as the Court deems necessary and proper.

Dated: November 7, 2017

Respectfully submitted,

By: /s/ Clinton A. Krislov  
*Attorney for Plaintiffs*

Clinton A. Krislov  
Christopher M. Hack  
KRISLOV & ASSOCIATES, LTD  
20 North Wacker Drive, Suite 1300  
Chicago, Illinois 60606  
(312) 606-0500  
Firm ID: 91198

ELECTRONICALLY FILED  
11/7/2017 4:35 PM  
2017-CH-14834  
PAGE 9 of 9