

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

MICHAEL SIEGEL, on behalf of himself and all)
other persons and entities similarly situated,)

Plaintiff,)

v.)

Case No.

FILED
2011 FEB -1 PM 3:11

JUDY BAAR TOPINKA, in Her Official Capacity)
as Comptroller of the State of Illinois; DAN)
RUTHERFORD, in His Official Capacity)
as Treasurer of the State of Illinois; JESSE)
WHITE, in His Official Capacity as Secretary)
Of State of the State of Illinois; and BRIAN)
HAMER, in His Official Capacity as Director)
of the State of Illinois Department of Revenue,)

Defendants.)

11C 004 138

**PETITION FOR LEAVE TO FILE AN ACTION TO RESTRAIN AND
ENJOIN THE DEFENDANTS FROM DISBURSING PUBLIC FUNDS OF THE STATE
OF ILLINOIS PURSUANT TO 735 ILCS 5/§11-303**

NOW COMES Plaintiff, MICHAEL SIEGEL, on behalf of himself and all other persons and entities similarly situated, by and through his attorneys, Larry D. Drury, Ltd., and petitions this Court, pursuant to 735 ILCS 5/§11-303 for leave to file an Action to Restrain and Enjoin the Defendant from Disbursing Public Funds of the State of Illinois Pursuant to 735 ILCS 5/11-303.

In support of this Petition, the Plaintiff states as follows:

1. The Plaintiff, a state of Illinois citizen and taxpayer, brings this Petition pursuant to 735 ILCS 5/§11-303 for leave to file an action to restrain and enjoin the defendant from disbursing public funds of the State of Illinois, said action to be filed as a Verified Class Action Complaint (hereinafter "Complaint"), as attached hereto as Exhibit A, in which he seeks to restrain the

disbursement of public monies collected by the Defendants pursuant to an unconstitutional and void public act.

2. Public Act 96-34, which purported to authorize the Defendants to impose, assess and collect increased fees for title, renewal and registration services (hereinafter "Increased Fees"), has been ruled unconstitutional and void in its entirety.

3. The Defendants have imposed, assessed, collected, disbursed and/or charged the unconstitutional Increased Fees for vehicle renewal, registration and title services since January 1, 2010, and continue to do so despite the fact that Public Act 96-34 has been deemed unconstitutional and void in its entirety.

4. The Plaintiff's Complaint alleges causes of action for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Count I), injunctive relief (Count II), declaratory judgment (Count III), unjust enrichment (Count IV) and an accounting (Count V). These causes of action are based upon the Defendants' conduct in imposing, assessing, collecting, disbursing and/or charging unconstitutional fees for vehicle renewal, registration and title services.

5. The Complaint seeks relief including, but not limited to:

(a) Entry of a temporary restraining order, preliminary and/or permanent injunction pursuant to §11-101 of the Injunction Act (735 ILCS 5/§11-101) preventing the Defendants from continuing to impose, assess, collect, charge, and/or disburse the Increased Fees pursuant to the unconstitutional and void Public Act 96-34, until further order of Court; and

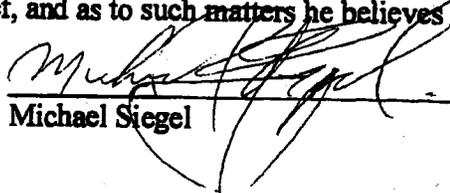
(b) Entry of a preliminary and permanent mandatory injunction, pursuant to §11-102 of the Injunction Act (735 ILCS 5/§11-102), directing the Defendants to deposit all collections imposed, assessed, collected or charged for Increased

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

The undersigned, Michael Siegel, being first duly sworn on oath, deposes and states that he has read the foregoing Verified Petition for Leave to File an Action to Restrain and Enjoin the Pursuant to 735 ILCS 5/§11-303, has knowledge of the facts stated therein, and that the matters and things therein set forth are true in substance and in fact, except those matters which are therein stated to be on information and belief, and as to such matters he believes them to be true.

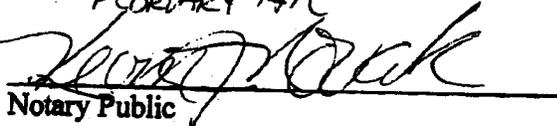
Defendants
on
sponsoring
Public Funds of the
State of Illinois



Michael Siegel

Subscribed and sworn to
before me this 1st
day of ~~January~~, 2011.

~~FEBRUARY 1st~~



Notary Public

"OFFICIAL SEAL"
Kevin J. Novak
Notary Public, State of Illinois
Lake County
My Commission Expires Sept. 28, 2014

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MICHAEL SIEGEL, on behalf of himself and all)
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Case No.)

JUDY BAAR TOPINKA, in Her Official Capacity)
as Comptroller of the State of Illinois; DAN)
RUTHERFORD, in His Official Capacity)
as Treasurer of the State of Illinois; JESSE)
WHITE, in His Official Capacity as Secretary)
Of State of the State of Illinois; and BRIAN)
HAMER, in His Official Capacity as Director)
of the State of Illinois Department of Revenue,)

Defendants.)

VERIFIED CLASS ACTION COMPLAINT

NOW COMES Plaintiff, MICHAEL SIEGEL, (hereinafter "SIEGEL"), on behalf of himself and all others similarly situated, by and through his attorneys, LARRY D. DRURY, LTD. and as his complaint against Defendants, JUDY BAAR TOPINKA, in Her Official Capacity as Comptroller of the State of Illinois, DAN RUTHERFORD, in His Official Capacity as Treasurer of the State of Illinois, JESSE WHITE, in His Official Capacity as Secretary of State of the State of Illinois; and BRIAN HAMER, in His Official Capacity as Director of the State of Illinois Department of Revenue, states as follows:

NATURE OF THE CASE

1. This matter arises from the actions of the Defendants in imposing, assessing, collecting disbursing and/or retaining unconstitutional taxes and/or fees. On July 23, 2009, Governor Patrick Quinn signed into law the Capitol Projects Act, four pieces of legislation passed by the Illinois General Assembly, namely Public Acts 96-34, 96-35, 96-37 and 96-38, (hereinafter

referred to as "Public Act 96-34"). These Acts sought, in part, to increase various fees and fines upon necessary goods and/or services, including but not limited to fees for license plates, automobile titles and driver's licenses. These Public Acts were later held unconstitutional. Plaintiff brings this Class Action Complaint on behalf of himself and all others similarly situated throughout the state of Illinois from January 1, 2010 to the date of judgment who paid unconstitutional Increased Fees as defined herein at paragraph 11, to enjoin the Defendants from continuing to collect and/charge or disburse the unconstitutional fees, and to reimburse all such Increased Fees paid pursuant to the unconstitutional Public Act 96-34 alleged herein, with interest.

PARTIES, JURISDICTION & VENUE

2. Plaintiff, Michael Siegel, is an individual citizen and taxpayer of the State of Illinois who at all times relevant hereto resided within the Counties of Cook and Lake, State of Illinois.

Plaintiff purchased and paid \$99.00 to the State of Illinois on or about July 4, 2010 for a renewal fee for his 2011 Illinois Registration Identification Card. Plaintiff also paid \$95.00 to the State of Illinois on or about December 21, 2010, for a fee for State Title Fees.

3. Defendant, Judy Baar Topinka, is being sued in her official capacity as Comptroller of the State of Illinois.

4. Defendant, Daniel Rutherford, is being sued in his official capacity as Treasurer of the State of Illinois.

5. Defendant, Jesse White, is being sued in his official capacity as Secretary of State of the State of Illinois.

6. Defendant, Brian Hamer, is being sued in his official capacity as Director of the Illinois Department of Revenue.

7. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209, in that the Defendants have transacted business and committed acts relating to the matters complained of herein in this state. The Court has jurisdiction over this action pursuant to 735 ILCS 5/11-303, in that the Plaintiff brings this action to restrain the Defendants from disbursing the public funds collected, and/or to direct the Defendants to reimburse same, in connection with the Public Act 96-34 alleged herein. Further, the Court has jurisdiction to declare the rights and obligations of the parties under 735 ILCS 5/2-701.

8. Venue is proper in this Court pursuant to 735 ILCS 5/2-101, 735 ILCS 5/2-102, and 815 ILCS 505/10a(b), as Defendants are doing business in Cook County, Illinois, and the transaction that is the subject of this matter occurred in Cook County. This case should be heard in a state forum. Plaintiff asserts no federal question and Plaintiff's state law claims cannot be federally pre-empted on any grounds. Plaintiff's individual claim is valued at less than \$75,000 inclusive of all damages and fees, and Plaintiff expressly disclaims any amount of individual recovery equal to or exceeding \$75,000.00.

FACTUAL ALLEGATIONS

9. The State of Illinois mandates that all vehicles be registered and that all vehicles have a certificate of title issued in the owner's name. As such, the matters concerned of herein are necessities such that failure to register one's vehicle, or title one's car, would result in Plaintiff's and the Class' loss of an essential need, specifically the ability to drive for purposes of transportation, work and/or travel. Further, failure to comply with these requirements may subject one to criminal liability and/or statutory fines¹.

¹ Pursuant to 625 ILCS 5/3-401, it is unlawful for any person to drive or move, or an owner to permit to be driven or moved, any vehicle required to be registered which is not registered. Pursuant to 625 ILCS 5/3-101, every owner of a vehicle in Illinois must make application for a certificate of title of the vehicle.

10. Public Act 96-34, approved by the General Assembly and signed into law by Governor Patrick Quinn, increased title and registration fees, each of which is included in the public fisc and funds, (herein referred to as "Increased Fees") for any and all registrations, renewals and/or title transfers that occurred after January 1, 2010, as follows:

Registration Fees:

Passenger Vehicles, Ceremonial Vehicles and B class Vehicles:
New Fee: \$99 Prior Fee: \$79 [increase of \$20.00]

Title Fees:

Certificate of Title & Duplicate/Corrected Certificate of Title:
New Fee: \$95 Prior Fee: \$65 [increase of \$30.00]

Renewal Fee Extensions:

New Fee: \$8/month Prior Fee: \$6.50/month [increase of \$1.50/month]

11. The Plaintiff and the Class have paid for their registration(s), title(s) and/or renewal extension(s) at the Increased Fees rates, and the Defendants have imposed, assessed, collected, charged, disbursed and/or retained same.

12. Public Act 96-34 was found to violate the single subject clause of the Illinois Constitution (Ill. Const. 1970, art. IV, §8) and was therefore held unconstitutional and void in its entirety by the First District Appellate Court of Illinois on January 26, 2011².

13. Despite Public Act 96-34 being held unconstitutional and void in its entirety, the Defendants continue to collect, retain and/or disburse the ill-begotten Increased Fees paid by Plaintiff and the Class pursuant to Public Act 96-34.

² W. Rockwell Wirtz, et al., v. Patrick Quinn, et al., 1-09-3163 and 1-10-0344.

14. Despite Public Act 96-34 being held unconstitutional and void in its entirety, the Defendants have expressed an intent to, and will, continue to impose, assess, collect, charge, retain and/or disburse the Increased Fees.

CLASS ALLEGATIONS

15. Plaintiff brings this action individually and on behalf of a Class of similarly situated individuals and/or entities throughout Illinois who have paid passenger, ceremonial and B-class vehicle registration fees, Certificate of Title and Duplicate/Corrected Certificate of Title fees and/or Renewal Fee Extensions, between January 1, 2010, to the date of judgment herein.

16. The Class is so numerous that joinder of all members is impracticable, as the Class includes hundreds of thousands of persons.

17. Questions of fact or law are common to the Class and predominate over any questions affecting only individual members, including, for example the following:

- a. Whether Plaintiff and the Class have paid the Increased Fees;
- b. Whether the Defendants were entitled to impose, assess, collect, disburse and/or retain the Increased Fees;
- c. Whether the Defendants should account for the ill-begotten Increased Fees;
- d. Whether the Defendants should be ordered to reimburse Plaintiff and the Class the amount of the Increased Fees, plus interest;
- e. Whether the Defendants were unjustly enriched by their conduct in imposing, assessing, collecting, charging, retaining and/or disbursing the Increased Fees;
- f. Whether Plaintiff and the Class are entitled to injunctive relief;
- g. Whether Plaintiff and the Class are entitled to declaratory judgment; and

h. Whether the Defendants violated the Illinois Consumer Fraud and Deceptive Business Practices Act by their conduct.

18. Plaintiff's claims are typical of the claims of the other Class members.

19. Plaintiff will fairly and adequately protect the interests of the Class. All Class members will receive proper, efficient and appropriate protection of their interests by the representative party, as the representative party are not seeking relief which is potentially antagonistic to the members of the Class.

20. Plaintiff's attorneys are competent, qualified and experienced to prosecute the action on behalf of the Class.

COUNT I
VIOLATION OF THE ILLINOIS CONSUMER
FRAUD & DECEPTIVE BUSINESS PRACTICES ACT (UNFAIRNESS)

1-20. Plaintiff and the Class repeat and reallege all allegations in paragraphs 1 through 20 herein as though fully set forth in this Count I.

21. The Plaintiff and Class were consumers of the Defendants' registration, renewal and title services within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act (hereinafter "ICFA"). 815 ILCS 505/1 *et seq.*

22. The Defendants conduct as alleged herein was undertaken within the course of trade or commerce.

23. The Defendants conduct in imposing, assessing, collecting, charging, retaining and/or disbursing the Increased Fees pursuant to unconstitutional Public Act 96-34 is unfair within the meaning of the ICFA in that it is:

- a. an offense to public policy under statutory or common law to undertake unconstitutional Public Act 96-34 and/or engage in unconstitutional conduct such as is alleged herein;
- b. immoral, unethical, oppressive and unscrupulous to impose and collect the Increased Fees pursuant to unconstitutional Public Act 96-34; and
- c. the cause of substantial injury to Plaintiff and the Class as they have been deprived of the use, benefit and possession of their monies pursuant to the unconstitutional Public Act 96-34 of the Defendants.

24. The Defendants' conduct does not fall within any of the statutory or non-statutory exemptions to the ICFA because Public Act 96-34 purports to authorize the Defendants' conduct in imposing and collecting the Increased Fees, was held unconstitutional and void in its entirety, and thereby does not 'authorize' the Defendants' conduct as alleged.

25. As a result of the Defendants' unfair conduct, the Plaintiff and the Class have sustained damages including, but not limited to, the Increased Fees paid, plus interest and their attorney's fees.

COUNT II **INJUNCTION**

1-25. Plaintiff and the Class repeat and reallege all allegations in paragraphs 1 through 25 herein as though fully set forth in this Count II.

26. Plaintiff and the Class have an interest in the Increased Fees, have no adequate remedy at law to enjoin and restrain the Defendant's conduct with respect to their collection and/or disbursement of Increased Fees pursuant to the unconstitutional Public Act 96-34, and

will suffer irreparable harm and injury if not so enjoined and/or restrained requiring the entry of a temporary restraining order, a preliminary/permanent injunction and/or mandatory injunction.

27. Pursuant to §11-101 of the Injunction Act (735 ILCS 5/11-101), and based upon the facts and circumstances alleged herein, the Defendants should be enjoined and/or restrained by a temporary restraining order, preliminary and/or permanent injunction from continuing to impose, assess, collect, charge and/or disburse the Increased Fees pursuant to Public Act 96-34, until further order of Court.

28. Pursuant to §11-102 of the Injunction Act (735 ILCS 5/11-102), and based upon the facts and circumstances alleged herein, the Defendants should be directed by a preliminary and permanent mandatory injunction to deposit all collections assessed or charged for Increased Fees pursuant to Public Act 96-34 into a constructive trust and/or court designated fund, until further order of the Court.

29. Plaintiff and the Class are likely to succeed on the merits and the hardships are balanced in their favor.

30. For good cause shown, bond should be waived.

COUNT III
DECLARATORY JUDGMENT

1-30. Plaintiff and the Class repeat and reallege all allegations in paragraphs 1 through 30 herein as though fully set forth in this Count III.

31. Plaintiff and the putative members of the Class have substantial legal interests in the events described above, and deserve to be reimbursed for any Increased Fees paid pursuant to the now unconstitutional Public Act 96-34, and deserve to be free of the Defendants' continued

imposition, assessment, collection, retention and/or disbursement of said Increased Fees pursuant to Public Act 96-34.

32. The Defendants, however, have taken the opposite approach by, at relevant times, continuing to impose, assess, collect, retain and/or disburse Increased Fees paid by the Class pursuant to the unconstitutional Public Act 96-34, and have expressed an intent to continue doing so for the foreseeable future.

33. The Defendants have interests adverse to Plaintiff and the Class, and in fact have benefitted as a result of their conduct as alleged herein at the expense of Plaintiff and the Class, so that an actual case or controversy exists between the Defendants and the Plaintiff and Class.

34. The Court can resolve this dispute by declaring the parties' relevant rights and obligations under Illinois law, by requiring the Defendants to refund the previously collected Increased Fees with interest, preventing the Defendants from continuing to act as aforesaid, and by establishing a constructive trust and/or a court designated fund consisting of Increased Fee monies, et al., collected from Plaintiff and the Class members until further order of the Court.

COUNT IV
UNJUST ENRICHMENT

1-34. Plaintiff and the Class repeat and reallege all allegations in paragraphs 1 through 34 herein as though fully set forth in this Count IV.

35. The Defendants have collected and retained the Increased Fees to which they were not entitled, plus interest, paid to them by Plaintiff and the Class to the detriment of Plaintiff and the Class, and have thereby been unjustly enriched.

36. All monies retained by the Defendants that were collected in connection with the Increased Fees should, in equity and good conscience, be refunded, with interest thereon, to the Plaintiff and the Class.

37. As a result of the Defendants' conduct, the Plaintiff and the Class suffered damages, including, but not limited to the amount of the Increased Fees paid, plus interest.

COUNT V **ACCOUNTING**

1-37. Plaintiff and the Class repeat and reallege all allegations in paragraphs 1 through 37 herein as though fully set forth in this Count V.

38. Pursuant to the conduct alleged herein and causes of action, the circumstances and relationship between the parties gives rise to a duty on the party of the Defendant to account to Plaintiff and the Class.

39. No other adequate remedy at law exists.

40. The exact number or amount of Increased Fees collected and retained by the Defendants from Plaintiff and the Class, and interest earned thereon, cannot be presently known because all books of account and records pertaining to same are in the possession and control of the Defendants.

41. Accordingly, an accounting would permit Plaintiff, the Class, and the Court to ascertain the amounts due to Plaintiff and the Class.

42. An accounting should be conducted in equity under the supervision of this Court because it would involve intricate itemizations of revenue, interest, fees and costs, and there is a need for discovery.

PRAYER FOR RELIEF

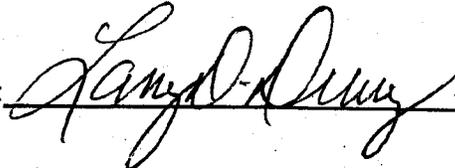
WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays that the Court enter an order as follows:

- A. Certify this action as a class action;
- B. Appoint Plaintiff as representative of the Class and LARRY D. DRURY, LTD. as Class counsel;
- C. Find that the Defendants have violated applicable laws as set forth herein;
- D. Find that the Defendants have been unjustly enriched by their conduct;
- E. Find that the Defendants have engaged in unfair acts in violation of the ICFA;
- F. Award Plaintiff and the Class actual and compensatory damages, plus attorneys' fees;
- G. Declare the rights of the parties as requested;
- H. Establish a constructive trust and/or court designated fund consisting of Increased Fees collected by the Defendants pursuant to Public Act 96-34 from Plaintiff and the Class;
- I. Order an accounting with respect to the Defendants' collection of Increased Fees pursuant to Public Act 96-34 from Plaintiff and the Class;
- J. Enter a temporary restraining order, a preliminary/permanent injunction, and a mandatory injunction as requested in Count III herein;
- K. Award reasonable attorney's fees and costs; and
- L. Grant such other relief as the Court deems appropriate.

Respectfully submitted,

Dated: February 1, 2011

MICHAEL SIEGEL, on behalf of himself
and all others similarly situated,

By: 

LARRY D. DRURY (Atty. Id. No. 22873)
JAMES R. ROWE (Atty. Id. No. 41862)
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