

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FRANCIS LIVINGOOD, CHRISTOPHER
MAURY, and DANIEL ROBBINS,

Plaintiffs,

v.

CITY OF DES MOINES,

Defendant.

Case No. CVCV053512

NOTICE OF CLASS ACTION LAWSUIT

***This is not a solicitation nor an advertisement from a lawyer.
You are not being sued.***

TO: Any vehicle owner who received a Notice of Violation between February 9, 2015, and the present, alleging an act of speeding, based on evidence produced by one of the speed cameras in the City of Des Moines (“City”), wherein the City did not file a district court civil infraction action to obtain a judgment finding that the vehicle owner was speeding, wherein the vehicle owner was issued a Notice of Offset, and:

Subclass 1: whose alleged civil fine or penalty amounts were not yet withheld by the Iowa Department of Administrative Services from the vehicle owners’ State income tax refunds, as per the City’s use of the Offset Program under Iowa Code section 8A.504, seeking Declaratory and Injunctive relief based on preemption of municipal code by Iowa Code section 364.22; or

Subclass 2: whose alleged civil fines or penalty amounts had been withheld by the Iowa Department of Administrative Services from the vehicle owners’ State Income Tax refunds at the City’s request under Iowa Code chapter 8A.504 who called and paid upon receipt of the notice that their income tax refunds had been withheld subject to the Offset Program, seeking Restitution under unjust enrichment of Defendant based on preemption of municipal code by Iowa Code section 364.22; or

Subclass 3:

whose alleged civil fines or penalty amounts had been withheld by the Iowa Department of Administrative Services from the vehicle owners' State Income Tax refunds at the City's request under Iowa Code chapter 8A.504 who did not act and had the ATE citation amount taken pursuant to the Offset Program, seeking Restitution under unjust enrichment of Defendant based on preemption of municipal code by Iowa Code section 364.22.

IMPORTANT LEGAL NOTICE – READ CAREFULLY

I. WHAT IS THE PURPOSE OF THIS NOTICE?

This notice is to inform you that the Iowa District Court for Polk County, Iowa, has certified a lawsuit to proceed as a class action on behalf of all vehicle owners who have received citations alleging ATE violations issued by the City of Des Moines, Iowa ("the City") and were issued a Notice of Offset, defined as the City's first communication with a vehicle owner whereby the use of the Offset process was referred to as either a possible or initiated collection method, with a date not earlier than February 9, 2015 (the statute of limitations cutoff pursuant to Iowa Code section 670.5), which have not been subject to municipal infraction lawsuits:

Subclass (1) whose alleged civil fine or penalty amounts were not yet withheld by the Iowa Department of Administrative Services from the vehicle owners' State income tax refunds, as per the City's use of the Offset Program under Iowa Code section 8A.504, seeking Declaratory and Injunctive relief based on preemption of municipal code by Iowa Code section 364.22.

Subclass (2) whose alleged civil fines or penalty amounts had been withheld by the Iowa Department of Administrative Services from the vehicle owners' State Income Tax refunds at the City's request under Iowa Code chapter 8A.504 who called and paid upon receipt of the notice that their income tax refunds had been withheld subject to the Offset Program, seeking Restitution under unjust enrichment of Defendant based on preemption of municipal code by Iowa Code section 364.22,

Subclass (3) whose alleged civil fines or penalty amounts had been withheld by the Iowa Department of Administrative Services from the vehicle owners' State Income Tax refunds at the City's request under Iowa Code chapter 8A.504 who did not act and had the ATE citation amount taken pursuant to the Offset Program, seeking Restitution under unjust enrichment of Defendant based on preemption of municipal code by Iowa Code section 364.22.

However, those vehicle owners who have already successfully appealed their ATE citation after receiving notice of offset are excluded from all class participation.

This Notice describes who will be a part of the class action, a Member of one of these subclasses. It also tells you what you need to do if you wish to not be a part of the class action (or opt out of it).

II. WHAT IS THE CASE ABOUT?

This action has been brought by individuals (“Plaintiffs”) who received one or more Notices of Violation triggered by automated traffic enforcement (ATE) cameras related to alleged speeding by vehicles owned by Plaintiffs in the City of Des Moines (“City”). Where the City had not obtained municipal infraction judgments in the Iowa District Court requiring Plaintiffs to pay the alleged fines owed, the City had still issued Notices of Offset indicating its intention to use the State Offset Program to seize Plaintiffs money to satisfy the alleged fine. For one such Plaintiff, the City never used the State Offset Program to seize his money. For a second Plaintiff, the City used the State Offset Program to seize their money, and the Plaintiff called the City and paid the alleged fine to release the remainder of the seized tax refund. For a third Plaintiff, the City used the State Offset Program to seize the money and then had that money applied to satisfy the alleged fine pursuant to the State Offset Program.

The Plaintiffs made many claims, but eventually the District Court granted judgment to one of the Plaintiffs pursuant to decisions of the Iowa Supreme Court that prohibit cities from using the State Offset Program to obtain vehicle owner funds to pay speed camera-based fines without first obtaining a municipal infraction judgment in an Iowa District Court. The District Court, based upon the Iowa Supreme Court’s determination, ruled that the City should be enjoined from seizing Plaintiff’s funds using the State Offset Program given that it never obtained a judgment of liability in an Iowa District Court. The other two Plaintiffs have one claim remaining to be decided, namely Plaintiffs argue the City was unjustly enriched after the City used the State Offset Program to unlawfully seize Plaintiffs’ money when the City failed to obtain a judgment in an Iowa District Court.

This Notice is being sent to you because, as a vehicle owner, the City has identified you as having been sent one or more Notices of Offset announcing the City’s intention to use the State Offset Program to pay a fine allegedly owed by you without, first, having obtained a municipal infraction judgment against you in the District Court, and (1) **Subclass 1**-the City has not yet used the State Offset Program

to seize money to pay the alleged fine; or (2) **Subclasses 2 and 3**-you had your funds withheld through the State of Iowa Income Offset Program.

You may therefore be a member of one of the Subclasses that the Court certified in this case.

III. WHO ARE THE PLAINTIFFS?

This action was brought by three Plaintiffs, as representative parties, to proceed on behalf of a class of persons who are like themselves. The Court has split the class into three subclasses. The representative parties are as follows:

Francis Livingood:
516 Pole Line Rd.
Postville, Iowa 52162
Subclass 1

Christopher Maury
100 Tower Dr.
Manchester, Iowa 52057
Subclass 2

Daniel Robbins:
733 26th St.
Des Moines, Iowa 50312
Subclass 3

IV. WHO IS IN THE CLASS?

The class of people (“Class”) covered by this Notice of Class Action Lawsuit (“Notice”) includes any vehicle owner from February 9, 2015, through to the present who:

(1) Received a Notice of Violation from the City of Des Moines (“City”), for allegedly driving over the speed limit; and

(2) The City did not pursue a district court action to obtain a judgment that the vehicle owner was speeding;

Subclass 1:

(3) The City issued a Notice of Offset indicating its intention to use the State Offset Program to seize the Class Member's money to satisfy the alleged fine; and

(4) The City has not yet used the State Offset Program to collect the alleged civil fine or penalty.

Subclasses 2 and 3:

(3) A hold was placed on your tax refund or other payment owed to you by the State of Iowa pursuant to the City's use of the State Offset Program; and

(4) The Class Member either contacted the City and paid the alleged fine or penalty for speeding, or the Class Member did not contact the City but had their funds withheld by the City through the Offset Program.

You may verify your eligibility for being a Member of any of these Subclasses by contacting Class Counsel (James C. Larew) at the Larew Law Office at 319-337-7079. Individuals satisfying the Class definition are sometimes referred to as "eligible Class Members" in this Notice.

V. WHY DID I RECEIVE THIS NOTICE?

According to City of Des Moines records, you received a Notice of Violation for owning a vehicle that was allegedly operated above posted speed limits between February 9, 2015 and the present date, as determined by the City's traffic cameras, and:

Subclass 1: you were sent a Notice of Offset, and the City has not yet used the State Offset Program to seize your money to satisfy the fine or penalty fine allegedly owed to it as a result of the alleged speeding incident; or

Subclasses 2 and 3: you had some portion of your state income tax refund or other income withheld under the State Offset Program, that you contacted the City and paid the alleged fine or penalty for speeding, or you had your funds withheld without contacting the City.

In this status, you may be eligible to be a Class Member.

VI. CAN I HIRE MY OWN LAWYER?

Yes, you can hire your own lawyer to represent you, but you do not have to do so. Any eligible Class Member can enter an appearance in this case on his or her own, or through any other counsel. If you are an eligible Class Member and you have not opted out, then the lawyer for the Class (or Class Counsel) will represent you.

VII. HOW LONG WILL THIS CASE TAKE?

Unfortunately, that is impossible to know. This case was filed in February of 2017. The District Court certified the class on July 9, 2024. No decision has been made on whether the City is liable to each Member of Subclasses 2 and 3 under the unjust enrichment claim. As soon as more is known, as long as you are part of this case, you will be informed of any timeline or the next steps.

VIII. WHAT DO I HAVE TO DO TO STAY A PART OF THIS CASE?

Nothing. No action is required by you in order to remain a part of this case. As long as you are an eligible Class Member, you will be a part of this case and any resolution of it, unless you choose to exclude yourself (or opt out), as described below.

IX. WHAT DO I HAVE TO DO IF I DO NOT WANT TO BE A PART OF THIS CASE?

You have the right to be excluded from this case under Iowa Rule of Civil Procedure 1.267 by filing an election to be excluded within sixty days of your receipt of this Notice. If you do not wish to remain a part of this case as an eligible Class Member, and any entitlement to receive a return of the funds withheld from you, you need to fill out the form provided with this Notice entitled “Opting Out of the Class Action – Election to be Excluded” and return it to the Clerk of Court by the date specified on that document.

X. HOW COULD THIS CASE AFFECT ME?

Subclass 1: The Plaintiff representing this subclass was granted declaratory relief and an injunction, meaning that the City of Des Moines is prohibited from using the State Offset Program to seize a state income tax refund or other income to satisfy a fine or penalty fine allegedly owed to it as a result of an alleged speeding incident involving the Member’s vehicle recorded by an automated speed camera that occurred between February 9, 2015, and the present date, when the City had not

first obtained a municipal infraction judgments in Iowa District Court requiring Plaintiff to pay the alleged fine. All eligible Class Members are entitled to the injunctive relief. Members of Class 1 are not entitled to recover monetary damages.

Subclasses 2 and 3: Plaintiffs are seeking a refund of any amounts paid to the City of Des Moines after the City used the State Offset Program to seize your state income tax refund or other income and then you either paid the fine after contacting the City or the fine was withheld without further action by you for an alleged speeding incident involving your vehicle recorded by automated speed cameras between February 9, 2015, and the present date, when the City had not first obtained a municipal infraction judgment in Iowa District Court requiring you to pay the alleged fine or penalty. If the case is successful, any amount you paid could be refunded. If this case is unsuccessful, there will not be any financial consequence to the Class or any eligible Class Member. In other words, if the case is unsuccessful, nothing will change.

If you remain in this case, the judgment, whether favorable or not, will be binding on all eligible Class Members who are not excluded from the action.

XI. HOW DO I GET FURTHER INFORMATION?

This Notice is a general description and does not cover all the details of the case. If you have any questions, or want any copies of the documents that have been filed in this case, you may contact the lawyer who brought this lawsuit (Class Counsel):

James C. Larew
Larew Law Office
504 E. Bloomington St.
Iowa City, IA 52245
(319) 337-7079
James.Larew@LarewLawOffice.com

Please do not contact the Judge, the Clerk of Court, or the City of Des Moines or their attorneys, with questions.

The pleadings and other papers filed in this case are available for inspection at the office of the Clerk of Court.

**IMPORTANT: OPT-OUTS FROM THE CLASS ACTION MUST BE
RECEIVED BY THE COURT BY [DATE HERE]**

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**FRANCIS LIVINGOOD, CHRISTOPHER
MAURY, and DANIEL ROBBINS,**

Plaintiffs,

v.

CITY OF DES MOINES,

Defendant.

Case No. CVCV053512

OPTING OUT OF THE CLASS ACTION – ELECTION TO BE EXCLUDED

I do not want to be a member of the Class represented by Plaintiff and Class Counsel in this case.

I understand that I could be represented by another attorney in this case but I do not wish to participate in this case in any manner. I do not wish to partake in any part of any potential recovery by the Class in this case.

YOUR NAME (printed): _____

YOUR ADDRESS: _____

YOUR PHONE NUMBER: _____

YOUR SIGNATURE: _____

DATE: _____

**THIS OPT OUT FORM (TO BE EXCLUDED FROM THE CLASS ACTION
LAWSUIT) MUST BE RECEIVED BY THE CLERK OF COURT BY
[DATE HERE], AT THE FOLLOWING ADDRESS:**

Clerk of Court
Iowa District Court for Polk County
500 Mulberry St. #212
Des Moines, IA 50309