

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS**

ROBERT ABRAHRAM, individually and ) on behalf of all others similarly situated, ) ) Plaintiffs, )	Case No. 22 LA 433 (consolidated with 22 LA 847)
v. )	
VILLAGE OF DOLTON, )	Class Action
)	
Defendants. )	

**DEFENDANT’S ANSWER TO PLAINTIFF’S SECOND AMENDED  
CLASS ACTION COMPLAINT AND AFFIRMATIVE DEFENSES**

NOW COMES the Defendant VILLAGE OF UNIVERSITY PARK (hereinafter “Defendant” and/or “Village”), by and through their attorneys Odelson, Murphey, Frazier & McGrath, Ltd., and for its answer to Plaintiff’s Second Amended Class Action Complaint states as follows:

**NATURE OF THE CASE**

1. University Park conducted an illegal scheme. University Park issues oversized and overweight tickets to commercial truckers driving in University Park. While Illinois law and University Park’s own ordinances require these tickets to be adjudicated in an Illinois court, University Park denied truckers their day in court by requiring the tickets to be adjudicated in University Park’s internal administrative system.

**ANSWER: Defendant admits it issued oversized and overweight vehicle tickets to commercial drivers traveling on the Village’s roadways that were administratively adjudicate by the Village’s Code Hearing Department, and denies the remaining allegations in Paragraph 1.**

2. University Park put itself in the position of being the “fox guarding the henhouse.” Because the fines due under these tickets were hefty, University Park used this scheme to generate millions of dollars for itself.

**ANSWER: Defendant denies.**

3. Because University Park lacked subject matter jurisdiction to issue judgments or liability findings regarding these tickets, the judgments and findings are null and void *ab initio*.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 3, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

4. University Park contains numerous warehouses. Many commercial truck drivers must drive through University Park to reach these warehouses.

**ANSWER: Defendant admits there are warehouses in the Village’s jurisdiction, and lacks sufficient information to admit or deny the allegations contained in paragraph 4.**

5. The University Park ordinances at issue involve violations and offenses reportable to the Illinois Secretary of State under the Illinois Vehicle Code, 325 ILCS 5/1-100, *et seq.*

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 4, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

6. Reportable offenses raise the stake immensely for commercial truckers who can potentially lose their licenses based on this reporting. Commercial truckers who lose their licenses to drive professionally lose their livelihood. It is imperative that the tickets University Park issues are appropriately tried in an Illinois court where there are safeguards involving an elected and sworn judge, rule of civil procedure, and rules of evidence.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 6.**

7. Plaintiff asserts the following claims on behalf of himself and similarly situated persons:

- A. Declaratory judgment that all fines, penalties, judgments, and liability findings resulting from University Park's administrative adjudication of tickets for violating University Park's oversized or overweight truck ordinances are null and void ab initio because University Park lacked subject matter jurisdiction to adjudicate those tickets administratively; and
- B. Unjust enrichment.

**ANSWER: Defendant denies.**

### **PARTIES**

8. Plaintiff Robert Abraham is an individual who resides in the State of Mississippi.

**ANSWER: Defendant admits.**

9. Plaintiff is a long-distance commercial truck driver and holder of commercial driver's licenses ("CDLs").

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 9.**

10. Defendant University Park is a municipal corporation organized under Illinois law and located in Will County, Illinois. University Park is a home-rule municipality.

**ANSWER: Defendant admits.**

### **JURISDICTION & VENUE**

11. Jurisdiction of this Court arises under 735 ILCS 5/2-209(a)(1)m (b)(3), and (c) because University Park is a municipal corporation organized under Illinois law that conducts business in Illinois.

**ANSWER: Defendant admits.**

12. Venue is proper in this district pursuant to 735 ILCS 5/2-103 because University Park is a municipal corporation with its principle office located in Will County, and Will County is where the transactions giving rise to this lawsuit occurred.

**ANSWER: Defendant admits.**

### **BACKGROUND**

#### **Illinois Municipal Code**

13. The Illinois Municipal Code (“Municipal Code”) only allows a municipality to adjudicate administratively particular ordinance violations. The relevant section of the Municipal Code provides:

Any municipality may provide by ordinance for 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 offenses under Section 6-204 of the Illinois Vehicle Code.

65 ILCS 5/1-2.1-2 (footnotes omitted).

**ANSWER: Defendant admits.**

14. Section 5/1-2.1-2 provides important limits on a municipality's authority to adjudicate administratively violations of its ordinances. These limits are designed to prevent municipalities from overstepping their bounds by violating the rights of persons who allegedly violated an ordinance.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 14, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

15. Section 5/1-2.1-2 sets forth two categories of ordinance violations that University Park cannot administratively adjudicate:

- A. Category 1: Where the ordinances govern “any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles.”
- B. Category 2: Where the ordinances involve a “reportable offense under Section 6-204 of the Illinois Vehicle Code.”

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 15, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

16. University Park could not administratively adjudicate the alleged oversized and overweight ordinance violations at issue because they fell into both categories.

**ANSWER: Defendant denies.**

**Category 1: Regulation Of The Movement Of Vehicles**

Illinois Vehicle Code

17. The Illinois Vehicle Code prohibits the movement of overlength vehicles. 65 ILCS 5/15-107(d) (“The length of a semitrailer, unladen or with load, operated in a truck tractor-semitrailer-trailer or truck tractor semitrailer-semitrailer combination, may not exceed...” (emphasis supplied)).

**ANSWER: Defendant admits.**

18. The Illinois Vehicle Code prohibits the movement of overweight vehicles. 625 ILCS 5/15-111 (“No vehicle or combination of vehicles with pneumatic tires may be operated, unladen or with load, when the total weight of the road surface exceeds ...” (emphasis supplied)).

**ANSWER: Defendant admits.**

19. Both of the foregoing Illinois Vehicle Code provisions are traffic regulations governing the movement of vehicles.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 19, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

University Park Ordinances

20. In August 1974, University Park enacted the following ordinance governing overweight vehicles operating in University Park:

No person shall operate a vehicle exceeding ten thousand (10,000) pounds gross weight on any of the streets or portions of streets within the corporate limits and under the jurisdiction of the Village, except Western Avenue, Crawford Avenue, Crete-Monee Road, Manhattan-Monee Road, Stege-Monee Road, Highway 50, Highway 54 (Governors Highway), and all streets and roads within the area bounded by Highway 50, Highway 54 (Governors Highway), Interstate 57, Stunkel Road, and Manhattan-Monee Road, commonly known as Governors Gateway Industrial Park, unless specifically designated in Section 428-06(b).

**ANSWER: Defendant admits Section 428-06 of the University Park Code of Ordinances was originally enacted by Ordinance No. 232 in August 1974.**

21. Plaintiff Abraham received a “Complaint and Notice to Appear” which alleged that he was driving an “oversize/overweight” vehicle. (Exhibit A).

**ANSWER: Defendant admits.**

22. The Notice in Exhibit A states that Abraham was in violation of ordinance 428.10, which is an ordinance that does not exist in the University Park Code.

**ANSWER: Defendant admits Abraham was cited for violating Ordinance 428.10, and lacks sufficient information to admit or deny the remaining allegations contained in paragraph 22.**

23. The Notice in Exhibit A states that “minimum penalty” is \$750.

**ANSWER: Defendant admits.**

24. University Park uses Ordinances 428-06 and/or 428.10 (which does not exist) to govern the same conduct by commercial truck drivers – oversized and overweight commercial trucks – that Illinois governs via the Illinois Vehicle Code.

**ANSWER: Defendant admits Section 428-06 of the University Park Code of Ordinances regulates the weight of vehicles traveling down its roadways, similar to the Illinois Vehicle Code, and lacks sufficient information to admit or deny the remaining allegations contained in paragraph 24.**

25. As a result, University Park Ordinances 428-06 and/or 428.10 (which does not exist) (the “University Park Ordinances”) govern an “offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 25, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

26. However, the University Park Code does not allow for the administrative adjudication of traffic and moving offenses that are offenses under the Illinois Vehicle Code or similar offenses.

**ANSWER: Defendant admits.**

27. Section 299.1-02 of the University Park Code states that:

All Village ordinances may be enforced through the administrative adjudication system provided that the system shall have no authority to impose a penalty or incarceration or to adjudicate an offense under the Illinois Vehicle Code (or similar offense) which is a traffic regulation governing the movement of vehicles, or to impose a fine in excess of fifty thousand dollars (\$50,000.00). (Emphasis added.)

**ANSWER: Defendant admits.**

28. Therefore, as set forth in its own Code, University Park did not have the authority to adjudicate administratively the very types of traffic regulations that are at issue in this action.

**ANSWER: Defendant denies.**

29. Further, as evidenced by the “minimum penalty” in Exhibit A, the University Park Code purports to authorize fines in excess of \$250, which it is prohibited from administratively adjudicating under 625 ILCS 5/11-208.9(b)(10) for alleged violations of regulations which were enacted by ordinance.

**ANSWER: Defendant denies.**

30. The Illinois Vehicle Code provides that the Illinois Secretary of State is responsible for maintaining information regarding moving violations and regulating the drivers licenses, including but not limited to, of persons who commit reportable violations. 625 ILCS 5/6-206.

**ANSWER: Defendant admits.**

31. Illinois maintains a “point system” for drivers. When drivers accrue a particular number of points, their driving privileges are restricted or revoked.

**ANSWER: Defendant admits.**

32. One of the ways in which a driver can accrue points is for a moving violation, which can lead to restrictions or revocations of a driver’s license. See 625 ILCS 5/6-206.

**ANSWER: Defendant admits.**

33. The University Park Ordinances regulate offenses that are reportable to the Illinois Secretary of State under § 6-204 of the Vehicle Code.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 33, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

34. The Illinois Vehicle Code provides the following relevant provisions regarding reportable offenses:

- a) For the purposes of providing to the Secretary of State the records essential to the performance of the Secretary's duties under this Code to cancel, revoke or suspend the driver's license and privilege to drive motor vehicles of certain minors and of persons found guilty of the criminal offenses or traffic violations which this Code recognizes as evidence relating to unfitness to safely operate motor vehicles, the following duties are imposed upon public officials: ...

*The reporting requirements of this subsection (a) apply to all violations listed in paragraphs (1) and (2) of this subsection (a), excluding parking violations, when the driver holds a CLP or CDL [commercial driver's license], regardless of the type of vehicle in which the violation occurred, or when any driver committed the violation in a commercial motor vehicle as defined in Section 6-500 of this Code.*

625 ILCS 5/6-204 (emphasis added).

**ANSWER: Defendant admits.**

35. For CLP and CDL licenses, Illinois reports moving violations to the Federal Motor Carrier Safety Administration (“FMCSA”). The FMCSA compiles driver information from across the country.

**ANSWER: Defendant admits.**

36. Improper reporting to the FMCSA can have drastic consequences for the livelihood of commercial truck drivers.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 36.**

37. The administrative adjudication of alleged violations of the University Park Ordinances lacks due process and other safeguards that Illinois deems important for offenses reportable to the Illinois Secretary of State and FMCSA.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 37, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

38. University Park is a municipality through which many commercial truckers drive trucks for a living.

**ANSWER: Defendant admits it is a municipality, and lacks information to admit or deny the remaining allegations contained in paragraph 38.**

39. University Park uses its police force to issue oversized and overweight tickets to commercial truckers.

**ANSWER: Defendant admits.**

40. These tickets required that the truckers pay, or challenge, the tickets in University Park’s own administrative adjudication system. University Park fully and unilaterally controls this system. University Park Code, Part Two, Title Ten ("Administrative Adjudication").

**ANSWER: Defendant admits that truckers can pay or challenge citations for violations of the University Park Code of Ordinances.**

41. These tickets instructed recipients who want to challenge the tickets to attend an administrative hearing in University Park. E.g., Abraham Ticket, Exhibit A hereto.

**ANSWER: Defendant admits.**

42. An administrative law officer presided over these administrative hearings. This administrative law officer was unelected and had their compensation determined and paid by University Park.

**ANSWER: Defendant admits.**

43. For these hearings in University Park's administrative system, the Illinois rules of civil procedure and Illinois rules of evidence did not apply.

**ANSWER: Defendant admits. However, the rules of evidence at administrative hearings are relaxed to allow the defendant or respondent, especially *pro se*, to fully present their case.**

44. University Park used the ticket itself as prima facie evidence of guilt. University Park Code, Part Two, Title Ten, Sec. 299-2-02(6).

**ANSWER: Defendant admits that, pursuant to Section 299.2-02 of the University Park Code of Ordinances, any Violation Notice issued, signed and served in accordance herewith, or a complete copy of the notice, shall be deemed prima facie correct and shall be considered prima facie evidence of the facts alleged therein.**

45. There was no corroborating video or other evidence admissible under Illinois rules of evidence, and truckers did not have the opportunity to cross-examine their accusers.

**ANSWER: Defendant denies.**

46. In short, University Park took a massive due process shortcut to impose significant fines on truckers.

**ANSWER: Defendant denies.**

47. University Park collected fines imposed by the tickets in one of three ways.

**ANSWER: Defendant admits.**

48. First, commercial truckers sent in payment to University Park before the administrative hearing date. When this occurred, University Park entered a judgment or an administrative order finding liability for the amount of the fine. University Park Code, § 299.3-01.

**ANSWER: Defendant admits commercial truckers who are cited for violation of a University Park municipal ordinance may pay their fine without requesting a hearing or before the hearing date.**

49. Second, commercial truckers unsuccessfully challenge a ticket. Where the challenge was unsuccessful, truckers either voluntarily paid or had the amounts involuntarily collected from them.

**ANSWER: Defendant admits that, upon unsuccessful challenge, truckers can voluntary pay a fine or such fine may be collected by the Village in accordance with applicable law pursuant to Section 299.7-02 of the University Park Code of Ordinances.**

50. Third, commercial truckers did not pay the ticket before the administrative hearing, and did not contest the ticket at the hearing. In that instance, University Park administratively entered a judgment or finding of liability against the truckers. University Park Code, § 299.3-01(4).

**ANSWER: Defendant admits.**

51. University Park retained all of the funds generated through its scheme. If these tickets were adjudicated in an Illinois court, University Park would have had to share the proceeds from the fines with other units of government.

**ANSWER: Defendant admits it retains the funds generated through its system of administrative adjudication, and denies the remaining allegations contained in paragraph 51.**

52. To bypass the distribution of fines paid for alleged violations of the Ordinances to the other units of government, University Park established for itself an in-home administrative traffic court system that allowed University Park to keep traffic court monies for itself.

**ANSWER: Defendant denies.**

53. Plaintiffs alleged violation of the Ordinances was required to be adjudicated in an Illinois court.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 53, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

54. Because University Park's administrative adjudication exceeded its authority to impose fines and render judgments and liability findings, it had no subject matter jurisdiction over the tickets it issued and had no subject matter jurisdiction over the adjudication of those tickets.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 54, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

55. University Park's administrative adjudication did not permit challenges to its jurisdiction and did not provide a method for adjudicating the relevant tickets in an Illinois court.

**ANSWER: Defendant denies.**

56. University Park's lack of subject matter jurisdiction over the tickets rendered University Park's administrative fines, judgments, and liability findings null and void *ab initio*.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 56, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

**Abraham's Ticket**

57. On October 20, 2017, a University Park police officer issued a ticket to Abraham for an allegedly oversized/overweight vehicle driving on a road not designated for that purpose

(the "Abraham Ticket"), which ticket stated that Abraham owed a minimum \$750 municipal fine for violating Ordinance 428.10 (which does not exist). Abraham Ticket, Exhibit A.

**ANSWER: Defendant admits Abraham was issued an overweight/overlength citation on such date, with a stated minimum fine amount of \$750.00, and lacks sufficient information to admit or deny the remaining allegations in paragraph 57.**

58. On October 26, 2017, according to the University Park's records, Abraham paid \$500 to University Park for his allegedly oversized/overweight vehicle.

**ANSWER: Defendant admits Abraham paid a fine of \$500 after liability for the offense cited was upheld by the Hearing Officer upon administrative hearing.**

59. As a result of the foregoing, University Park administratively adjudicated the Abraham Ticket.

**ANSWER: Defendant admits Abraham paid a fine of \$500 after liability for the offense cited was upheld by the Hearing Officer upon administrative hearing.**

60. Even though University Park illegally used its administrative adjudication system, Plaintiff had no viable choice but to pay the fines imposed by his ticket.

**ANSWER: Defendant denies.**

61. Whether the fines were paid in advance of an administrative hearing, at a hearing or after a hearing, all monies University Park collected pursuant to illegal administrative adjudications of tickets must be fully refunded and findings of liability voided. University Park had no legal right to impose the fines or collect any of those monies.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 61, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.**

62. Plaintiff and other members of the class proposed here ("Class Members") were injured by University Park's imposition of fines, entries of administrative judgments, or findings of liability that were null and void from their inception.

**ANSWER:** Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 62, as these allegations contain conclusions of law. Defendant demand strict proof of the alleged legal conclusions at trial.

63. Plaintiff and Class Members were damaged when they paid their respective fines or received findings of liability plus any penalties, attorney's fees and expenses, interest and other injuries stemming from University Park's enforcement of its administrative judgments or liability findings.

**ANSWER:** Defendant denies.

64. University Park's wrongful conduct inflicted damages upon Plaintiff and the Class Members by subjecting them to illegal fines and/or causing them to pay illegal fines.

**ANSWER:** Defendant denies.

65. Abraham was damaged when he paid \$500 to University Park for the Abraham Ticket.

**ANSWER:** Defendant denies.

66. Class Members were subjected to fines and/or paid significant amounts to University Park pursuant to University Park's illegal administrative adjudication of their tickets.

**ANSWER:** Defendant denies.

67. If Plaintiff and Class Members had not paid their respective fines, they faced consequences including but not limited to: fines of higher amounts for payments made after particular deadlines, collection proceedings, garnished wages, payment of University Park's attorney fees and costs incurred in enforcing a judgment. University Park Code, § 299. 7-03.

**ANSWER:** Defendant admits that any fine, penalty or part thereof assessed under the provisions of Title Ten of the University Park Code of Ordinances, and remaining unpaid after the exhaustion of, or the failure to exhaust, administrative remedies, is a debt due and may be collected in accordance with applicable law.

68. The tickets at issue also carried escalating fines if not paid by certain dates.

**ANSWER: Defendant admits.**

69. Nonpayment of the tickets could also cause a suspension of truck drivers' CDLs, which would make them unable to continue working as long-distance commercial truck drivers.

**ANSWER: Defendant denies. Based on information and belief, the Village did not report overweight/overlength offenses to the Secretary of State.**

70. Nonpayment of the tickets could also negatively impact truck drivers' federal compliance Safety, and Accountability (CSA") score, which is a safety measurement system used by the FMCSA to identify high-risk fleets, carriers, and drivers.

**ANSWER: Defendant denies. Based on information and belief, the Village did not report overweight/overlength offenses to the Secretary of State.**

71. Nonpayment is, therefore, not a viable option.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 71.**

72. Other truckers similarly situated to Plaintiff have been significantly damaged by virtue of University Park's conduct alleged herein.

**ANSWER: Defendant denies.**

73. Others similarly situated to Plaintiff were injured when they were subjected to fines and/or paid their fines to University Park pursuant to administratively adjudicated tickets for oversized or overweight trucks. Others similarly situated incurred additional damages when they paid additional amounts for collection, garnishment, liens, and similar expenses in connection with the illegally obtained judgments or liability findings against them.

**ANSWER: Defendant denies.**

### Cass Allegations

74. Plaintiff brings this lawsuit pursuant to the class act provision in the Illinois Code of Civil Procedure, 735 ILCS 5/2-801.

**ANSWER: Defendant admits.**

75. Plaintiff brings this lawsuit on behalf of themselves and a proposed class and subclass of persons, defined as follows:

All persons who after July 8, 2017, pursuant to a Village of University Park administrative proceeding, were assessed or paid a fine, penalty, had a judgment entered against them, or had a finding of liability against them for an oversized or overweight vehicle in violation of a University Park ordinance; excluded from the proposed class are the Village of University Park's respective officials and employees, Plaintiffs counsel and members of their immediate families, and the trial judge presiding over this case (hereinafter, the "Class"). The Subclass consists of class members who received or paid tickets alleging violation of an ordinance, specifically ordinance 428.10, which does not exist (hereinafter, the "Subclass").

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 75.**

76. The Court should certify the Class and the Subclass.

**ANSWER: Defendant denies.**

77. The Class Members are so numerous that joinder of all members is impracticable. The Class has more than 600 members, and, on information and belief, the Subclass has more than 40 members.

**ANSWER: Defendant denies.**

78. Plaintiff's claims are typical of the claims of the Class and Subclass Members because the claims are based on a common course of conduct by Defendant towards persons who had tickets for oversized or overweight vehicles administratively adjudicated by University Park. Their claims arise from the same set of operative facts described herein.

**ANSWER: Defendant denies.**

79. University Park engaged in a course of conduct that is generally applicable to Plaintiff and the Class and Subclass.

**ANSWER: Defendant denies.**

80. Plaintiff will fairly and adequately represent and protect the interest of the other members of the Class and Subclass. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions.

**ANSWER: Defendant denies.**

81. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the other members of the Class and Subclass. Neither Plaintiff nor his counsel have any interests that might cause them not to pursue this case vigorously.

**ANSWER: Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 81.**

82. Without a class action, Class and Subclass Members would find that litigating their individual claims would be cost-prohibitive, and as a result, they ultimately would not receive a remedy.

**ANSWER: Defendant denies.**

83. A class action is an appropriate method for the fair and efficient adjudication of this controversy. The claims of Plaintiff and the Class and Subclass are identical, as they are all based on Defendant's common course of conduct towards persons who had tickets for overlength and/or overweight trucks administratively adjudicated by University Park.

**ANSWER: Defendant denies.**

84. The prosecution of separate actions by individual Class and Subclass Members could create a risk of inconsistent or varying adjudications with respect to individual Class and Subclass Members that would establish incompatible standards of conduct.

**ANSWER: Defendant denies.**

85. Management of the Class and Subclass claims is likely to present significantly fewer difficulties than those presented in many individual claims. The identities of members of the Class and Subclass may be obtained from the records of University Park, which renders identification of Class and Subclass Members something capable of ministerial review.

**ANSWER: Defendant denies.**

86. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation because it conserves the resources of the courts and the litigants.

**ANSWER: Defendant denies.**

87. There are common questions of law and fact affecting the Class and Subclass Members, which are questions that predominate over any affecting only individual members. These common questions include, but are not limited to:

- A. Whether University Park exceeded its authority under Illinois law when it administratively adjudicated tickets for violations of the University Park Ordinances;
- B. Whether University Park lacked subject matter jurisdiction to adjudicate tickets administratively for violations of the University Park Ordinances;
- C. Whether the judgments entered pursuant to University Park's administrative adjudications of violations of the University Park Ordinances are null and void ab initio because they involve moving violations that must be adjudicated in an Illinois court;
- D. Whether the judgments entered pursuant to University Park's administrative adjudications of violations of the University Park Ordinances are null and void ab initio because they involve violations reportable to the Illinois Secretary of State;

- E. Whether the judgments entered pursuant to University Park's administrative adjudications of violations of the University Park Ordinances are null and void ab initio because they involve traffic violations that are precluded from being administratively adjudicated under the University Park Code;
- F. Whether the judgments entered pursuant to University Park's administrative adjudications are null and void ab initio when the judgments result from alleged violations of ordinances that do not exist;
- G. Whether it was unjust for University Park to retain the fines paid in connection with administratively adjudicated judgments for violations of the University Park Ordinances for oversized or overweight trucks because the judgments were null and void ab initio.
- H. Whether University Park's retention of the fines paid pursuant to administratively adjudicated judgments under the University Park Ordinances violates the fundamental principles of justice, equity and good conscience.

**ANSWER: Defendant denies.**

**Count I – Class**  
**Declaratory Judgment and Injunctive Relief**

- 88. Plaintiff incorporated herein by reference paragraph 1-87.

**ANSWER: Defendant answers all allegations contained in paragraphs 1 – 87 of this Complaint and incorporates them by reference as if fully set forth herein.**

- 89. Under Illinois Law:

This court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. ... Declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking other relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

735 ILCS 5/2-701(a)-(b).

**ANSWER: Defendant admits.**

90. Plaintiff is entitled to a declaratory judgment that all judgments and findings of liability resulting from University Park's administrative adjudication of tickets for oversized or overweight trucks are null and void ab initio because University Park lacked subject matter jurisdiction to adjudicate those tickets administratively.

**ANSWER: Defendant denies.**

91. As a direct and proximate result of University Park's conduct described herein, Plaintiff and Class Members have been harmed and are entitled to cancelation of all fines and findings of liability and to refunds of all amounts University Park collected pursuant to its illegal conduct set forth herein.

**ANSWER: Defendant denies.**

**Count II – Class**  
**Unjust Enrichment**

92. Plaintiff incorporates herein by reference paragraphs 1-87.

**ANSWER: Defendant answers all allegations contained in paragraphs 1 – 92 of this Complaint and incorporates them by reference as if fully set forth herein.**

93. As a result of University Park's intentional and willful conduct described herein, University Park has unjustly retained a benefit to the detriment of Plaintiff and Class Members.

**ANSWER: Defendant denies.**

94. As a result of the University Park's conduct described herein, it financially benefited through the wrongful collection of fines from truckers who had tickets for violations of the University Park Ordinances improperly administratively adjudicated.

**ANSWER: Defendant denies.**

95. University Park's conduct alleged herein was without a legal basis because University Park lacked subject matter jurisdiction to adjudicate administratively the tickets it issued to Plaintiff and Class Members for violations of its Ordinances.

**ANSWER: Defendant denies.**

96. University Park's conducted alleged herein created duress and coercion by forcing Plaintiff and Class Members to pay fines to University Park out of fear of the consequences of failing to pay those fines.

**ANSWER: Defendant denies.**

97. University Park's collection of fines that it wrongfully administratively adjudicated provided University Park with funds to which it was not entitled.

**ANSWER: Defendant denies.**

98. By virtue of the foregoing conduct, University Park's retention of the money paid for these fines violates fundamental principles of justice, equity, and good conscience.

**ANSWER: Defendant denies.**

99. As a direct and proximate result of University Park's conduct described herein, Plaintiff and Class Members have been significantly harmed.

**ANSWER: Defendant denies.**

100. In the alternative, there is no adequate remedy at law for Plaintiff and Class Members.

**ANSWER: Defendant denies.**

101. A constructive trust should be imposed over all monies that University Park has collected pursuant to its wrongful conduct alleged herein.

**ANSWER: Defendant denies.**

**Count III - Subclass**  
**Declaratory Judgment and Injunctive Relief**

102. Plaintiff incorporates herein by reference paragraphs 1-87.

**ANSWER:** Defendant answers all allegations contained in paragraphs 1 – 102 of this Complaint and incorporates them by reference as if fully set forth herein.

103. Under Illinois law:

The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested .... Declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking other relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

**ANSWER:** Defendant admits.

104. University Park is not authorized under any law to impose fines for alleged violations of ordinances that do not exist.

**ANSWER:** Defendant admits.

105. As a direct and proximate result of University Park's conduct described herein, Plaintiff and Subclass Members have been harmed and are entitled to cancelation of all fines and findings of liability, and refunds of all amounts paid which University Park collected pursuant to its illegal conduct set forth herein.

**ANSWER:** Defendant denies.

**Count IV - Subclass**  
**Unjust Enrichment**

106. Plaintiff incorporates herein by reference paragraphs 1-87.

**ANSWER:** Defendant answers all allegations contained in paragraphs 1 – 106 of this Complaint and incorporates them by reference as if fully set forth herein.

107. As a result of University Park's intentional and willful conduct described herein, University Park has unjustly retained a benefit to the detriment of Plaintiff and Subclass Members.

**ANSWER: Defendant denies.**

108. As a result of University Park's conduct described herein, it financially benefited through the wrongful collection of fines from truckers who received tickets for alleged violations of University Park Ordinances which do not exist.

**ANSWER: Defendant denies.**

109. University Park's conduct alleged herein was without a legal basis because University Park lacks any legal authority to impose fines on Plaintiff and Subclass Members for violations of ordinances which do not exist.

**ANSWER: Defendant denies.**

110. University Park's conduct alleged herein created duress and coercion by forcing Plaintiff and Subclass Members to pay fines to University Park out of fear of the consequences of failing to pay those fines.

**ANSWER: Defendant denies.**

111. University Park's collection of fines pursuant to tickets which were wrongfully issued provided University Park with funds to which it was not entitled.

**ANSWER: Defendant denies.**

112. By virtue of the foregoing allegations, University Park's retention of the money paid for these fines violates fundamental principles of justice, equity and good conscience.

**ANSWER: Defendant denies.**

113. As a direct and proximate result of University Park's conduct described herein, Plaintiff and Subclass Members have been significantly harmed.

**ANSWER: Defendant denies.**

114. In the alternative, there is no adequate remedy at law for Plaintiff and Subclass Members in connection with the unjust enrichment issued.

**ANSWER: Defendant denies.**

115. A constructive trust should be imposed over all monies that University Park has collected pursuant to its wrongful conduct alleged herein.

**ANSWER: Defendant denies.**

### **DEFENDANT'S AFFIRMATIVE DEFENSES**

NOW COMES Defendants, Cicero Public Library and Sandra Tomschin, by and through its attorneys Odelson, Murphey, Frazier & McGrath, Ltd., and, without prejudice to their denials of the allegations contained in Plaintiff's Complaint at Law and without waiver of the obligation of Plaintiff to prove each and every factual element of her claim and to carry her burdens of proof, states as follows for its Affirmative Defenses:

#### **FIRST AFFIRMATIVE DEFENSE (Exhaustion of Remedies)**

1. Plaintiff has failed to exhaust administrative remedies available to Plaintiff, such as filing an action for administrative review in the circuit court pursuant to Illinois Administrative Review Law ("ARL"), 735 ILCS 5/3-101 *et seq.*

#### **SECOND AFFIRMATIVE DEFENSE (Class Members Not Similarly Situated)**

1. Without assuming the burden of proof, Plaintiffs and members of the purported class or collective action are not similarly situated.

**THIRD AFFIRMATIVE DEFENSE  
(Voluntary Payment Doctrine)**

1. The claims of Plaintiff or purported class members against Defendant are barred, in whole or in part, by the voluntary payment doctrine or similar legal theory in that the obligations and fees about which Plaintiff complains were paid voluntarily.

Respectfully submitted,

**VILLAGE OF UNIVERSITY PARK**

By:     /s/ Patrick N. Roberts    

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