

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASTER TACHEBELE)
4704 Babbling Brook)
Olney, MD 20832)

On behalf of all others)
similarly situated,)

Plaintiff,)

v.)

GOVERNMENT OF THE)
DISTRICT OF COLUMBIA)

SERVE:)
Vincent Gray, Mayor)
1350 Pennsylvania Avenue NW)
Suite 316)
Washington, D.C. 20004)

and)

DUANE DELANY)
CLERK OF THE SUPERIOR COURT)
OF THE DISTRICT OF COLUMBIA)
500 Indiana, Ave., NW)
Washington, DC 20004)

Defendants.)

Civil Action No.

CLASS ACTION

**COMPLAINT FOR INDIVIDUAL MONEY DAMAGES AND EQUITABLE
RELIEF AND DECLARATORY RELIEF
WITH JURY DEMAND**

INTRODUCTION

1. This is an action brought by Aster Tachebele (“Named Plaintiff”) on her own behalf and on behalf of the class defined below injured (or presently subject to injury) by the policy and practice of the Government of the District of Columbia and Duane Delany, Clerk of the Superior Court, in his official capacity only, of acquiescing in the Metropolitan Police Department’s (“MPD”) and other arresting agencies’ practice of overcharging persons for amounts collected as “post and forfeit” amounts.

2. The Named Plaintiff brings this action against the Government of the District of Columbia and Duane Delany, Clerk of the Superior Court, in his official capacity only, under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce the Fourth and Fifth Amendments, for injuries suffered by her and the class, because the District overcharged them for fines paid pursuant to the “post and forfeit” procedure.

3. The Named Plaintiff also brings this action under the common law of the District of Columbia.

4. The Named Plaintiff and the class seek return of their “overages,” that is

the amounts they were overcharged, and other damages including prejudgment interest, damages (including compensatory damages for any injury attributable to loss of the property's use and compensation for the value of their time devoted to its retrieval), and attorney fees; as well as equitable and declaratory relief.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the § 1983 claims under 28 U.S.C. §1331 and 28 U.S.C. §1343(3)-(4).

6. This Court has supplemental jurisdiction over the District of Columbia common law claims under 28 U.S.C. §1367(a).

7. Named Plaintiff and the class are suing the government of the District of Columbia under the common law for liquidated damages only so D.C. Code § 12-309 does not apply.

8. Venue is proper in this jurisdiction pursuant to 28 U.S.C §1391(b) because the events or omissions underlying the claims occurred in this judicial district.

PARTIES

9. Duane Delany is the Clerk of the Superior Court of the District of Columbia (sometimes hereinafter the “Clerk” or the “Clerk of the Superior Court”). He is sued in his official capacity only.

10. The Clerk of the Superior Court manages all non-judicial court employees, the administrative functions, and the day-to-day operations of all divisions under his authority. The Clerk of the Superior Court manages the Budget and Finance Division, including the Banking and Finance Branch.

11. The Banking and Finance Branch of the Budget and Finance Division receives payments of court fees, fines and forfeitures.

12. The District Government of the District of Columbia (hereinafter the “District of Columbia” or the “District”) is a municipal corporation capable of being sued under D.C. Code § 1-102.

FACTUAL ALLEGATIONS

Background

13. The District has certain policies and practices pursuant to which the MPD and other arresting agencies making arrests in the District receive fines from persons whom the MPD and the other arresting agencies have charged with violations of certain

criminal and civil statutes and regulations called “collateral offenses”.

14. A “collateral offense” is an offense on which a person is eligible for release on posting of collateral or under the “post and forfeit” procedure.

15. The MPD typically classifies an offense as a “collateral offense” if the offense is on the list of “collateral offenses” periodically published by the Board of Judges of the Superior Court of the District of Columbia.

16. The list of “collateral offenses” published by the Board of Judges of the Superior Court are offenses for which the Board has set a bond in a schedule that MPD officers can administer at the station houses.

17. “Collateral offenses” consist mainly of offenses and civil infractions such as disorderly conduct, POCA (possession of an open container of alcohol), storage of property on public property, and sale of cigarettes to minors.

18. For example, the MPD and other agencies making arrests in the District (such as Park Police) receive “post and forfeit” amounts under D.C. Code § 5-335.01.

19. The MPD also receive money from persons pursuant to MPD “Standard Operating Procedures,” PD Form 61 D (Violation Citation).

20. The amount the MPD and other arresting agencies are supposed to collect from persons “post and forfeiting” on “collateral offenses” is the amount corresponding to the collateral offense on the list of “collateral offenses” periodically published by the

Board of Judges of the Superior Court of the District of Columbia.

Seizure by MPD and other agencies

21. When the police receive “post and forfeit” amounts they give each person a form called a “Collateral/ Bond Receipt” which has boxes into which are written the name, address, date of birth, arrest number, offense or infraction, and amount of money posted, and other information.

22. The data from the Collateral/ Bond Receipt is entered into “CJIS,” the MPD’s computerized booking database, memorializing the event. Each box on the Collateral/ Bond Receipt corresponds to a field in CJIS.

Superior Court

23. The data from CJIS gets downloaded into CourtView, the Superior Court’s computerized docketing system, which automatically “opens a jacket” (all jackets are now electronic, *i.e.*, “paperless”) and assigns a “post and forfeit” docket number to each “post and forfeit” event, *e.g.* “2010 PAF 1492,” where “2010” is the year, “PAF” is the case type, and “1492” is the case number.

24. The monies collected by the MPD or other agencies are forwarded to the District of Columbia Superior Court and recorded and held by the Clerk of the Superior Court.

25. The Banking and Finance Branch of the Budget and Finance Division receives payments of court fees, fines and forfeitures.

26. When the Clerk of the Superior Court receives the money from the MPD or other agency his clerks make a docket entry in CourtView memorializing how much money was received.

27. The Superior Court clerks also check the amount the MPD or other agency collected against the amount the MPD or other agencies should have collected for the offense.

28. Frequently the Superior Court clerks find that the MPD or other agencies overcharged a person when collecting a fine and the Superior Court clerks make an entry describing the fact and amount of the “overage” in a docket entry.

29. The Clerk of the Superior Court retains the inventoried cash including any “overages.”

30. The Clerk of the Superior Court does not send notice of the overages to persons from whom the overages were collected.

31. Personnel in the Budget and Finance Division of the Superior Court confirmed to plaintiffs’ counsel that the MPD and other agencies are overcharging people for fines, but that the Clerk of the Superior Court has no policy of making refunds, not even for people who take their paperwork to the Superior Court Finance

Office.

32. During the relevant period covered by this Complaint, the District and the Clerk of the Superior Court have had a policy and/or practice of administratively keeping overages and not making refunds even if a person goes to the office of the Clerk of the Superior Court and makes a demand for their overage.

EVENTS

33. Named Plaintiff Aster Tachebele “posted and forfeited” \$100 for sale of cigarettes to a minor on or about April 10, 2010 at the MPD’s 5th District station.

34. The correct “post and forfeit” amount for sale of cigarettes to a minor is only \$75.00.

35. The District and the Clerk of the Superior Court have kept the overage.

36. The District and the Clerk of the Superior Court have never provided notice of the overage to Named Plaintiff.

37. The District and the Clerk of the Superior Court have no system for making refunds of overages.

CLASS ACTION ALLEGATIONS

RULE 23 ALLEGATIONS

38. The Named Plaintiff on behalf of herself and the Class brings this action

under Rules 23(a), 23(b) (2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of each person who: (i) in the period beginning three years before the date of filing of the original complaint in this case and going forward until the case is terminated; (ii) paid a fine or amount to the MPD or other agencies for a collateral offense through the “post and forfeit” procedure; (iii) was overcharged according to the Superior Court CourtView data.

39. Certification of this class under Federal Rule of Civil Procedure 23(b)(2) is appropriate, because the District of Columbia (including the Clerk) have a policy, pattern, and practice for each claim that has uniformly affected all members the class, and appropriate relief includes a declaration that each class member is entitled to recover overages and an order requiring defendant to disgorge such amounts; and equitable relief and declaratory judgment against the District and the Clerk will benefit each and every plaintiff and class member. The class is entitled to equitable relief including restitution of the overages.

40. The Named Plaintiff and the class are entitled to declaratory judgment against the District and the Clerk that collecting overages and not refunding them is unconstitutional and violates the common law of the District of Columbia.

41. Certification of a class under Federal Rule of Civil Procedure 23(b)(3) is also appropriate, in that common questions of law and fact predominate over any

individual questions, and class action treatment is superior for the fair and efficient adjudication of these class claims as detailed below.

42. The class is entitled to monetary relief.

43. Regarding Named Plaintiff and the class, there are no individual questions on the issue of liability, because all members of the Class are injured by the same policy and practices.

44. Among the questions of law and fact common to the classes are:

- a.** whether the District and the MPD and the other arresting agencies charge some people too much when they pay “post and forfeit” amounts through the “post and forfeit” procedure;
- b.** whether the District and the Clerk have a practice and policy of retaining overages from persons who were overcharged when they paid “post and forfeit” amounts through the “post and forfeit” procedure;
- c.** whether charging more than the “post and forfeit” amount for a collateral offense and retaining the overage violates the Fourth Amendment;
- d.** whether charging more than the “post and forfeit” amount for a collateral offense and retaining the overage violates either substantive due process or procedural due process under the Fifth Amendment;

- e. whether Named Plaintiff and the members of the classes and future members are entitled to equitable relief, and, if so, what is the nature of that relief.

45. The proposed class is so numerous that joinder of all members is impracticable. The exact number of class members is unknown to Named Plaintiff at this time, but docket entries for the randomly chosen two week period April 1, 2010 to April 15, 2010 indicate that more than 30 people who “posted and forfeited” during that period were overcharged amounts ranging from \$10.00 to \$50.00.

46. Named Plaintiff’s claim is typical of the claims of the other members of the Class, because Named Plaintiff and all other members of the Class were injured by exactly the same means, that is, by the District’s policy and practice of overcharging persons who “posted & forfeited.”

47. Named Plaintiff on behalf of herself and the Class will fairly and adequately protect the interests of the members of the Class and has retained counsel who is competent and experienced in complex federal civil rights class action litigation.

48. Named Plaintiff has no interests that are contrary to or in conflict with those of the class.

CLAIM ONE

FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS CLAIM

49. All prior paragraphs are incorporated herein by reference as if fully set

forth herein.

50. Named Plaintiff and the class members have fundamental rights in their money.

51. No law authorizes the MPD and the other arresting agencies to collect more than the “post and forfeit” amount set by the Superior Court Board of Judges;

52. There is no rational relationship between collecting more than the “post and forfeit” amount and any interest the District or the Clerk have in the “post and forfeit” procedure;

53. The Clerk of the Superior Court knows that the MPD or other agencies sometimes overcharge and the Clerk of the Superior Court notes these overages in its accounts and memorializes them in the CourtView electronic database, the official docketing system of the Superior Court of the District of Columbia.

54. The Clerk of the Superior Court does not have any policy of refunding the overages to the persons who have been overcharged in their “post and forfeit” amounts.

55. Overcharging persons without refunding the overages violates substantive due process because the overcharges are not rationally related to any interest of the District.

CLAIM TWO

FIFTH AMENDMENT PROCEDURAL DUE PROCESS CLAIM

56. Neither the District nor the Clerk of the Superior Court notifies persons who were overcharged that they were overcharged; nor do they notify people about a refund procedure (because they do not have one).

57. Neither the MPD nor the other arresting agencies have any kind of pre-deprivation process to prevent overages (such as providing people “post and forfeiting” with copies of the collateral amounts).

58. Neither the District nor the Clerk of the Superior Court has any post-deprivation process because there is no way for persons to obtain refunds.

59. Overcharging persons without refunding the overages or providing a method for obtaining refunds violates procedural due process.

CLAIM THREE

FOURTH AMENDMENT CLAIM

60. Overcharging persons making “post and forfeit” payments violates the Fourth Amendment because the overages are unreasonable seizures.

CLAIM FOUR

CONVERSION CLAIM

61. Overcharging persons without refunding the overages or providing a

method for obtaining constitutes conversion under District of Columbia common law.

CLAIM FIVE

RESTITUTION

62. Overcharging persons without refunding the overages under District of Columbia common law would unjustly enrich the District and the Clerk of the Superior Court so the District and the Clerk of the Superior Court must make restitution for the overages.

CLASS RELIEF DEMANDS

Named Plaintiff on behalf of herself and all other members of the Class respectfully requests that this Court grant the following relief:

- A.** Declare the District's and the Clerk of the Superior Court's practice of overcharging persons making "post and forfeit" payments unconstitutional.
- B.** Award Named Plaintiff and the putative class members damages including the amounts they were overcharged, and other damages including prejudgment interest, and compensatory damages for any injury attributable to loss of the property's use and compensation for the value of their time devoted to its retrieval and other damages, and attorney fees; as well as equitable and declaratory relief.

- C.** Order the District and the Clerk of the Superior Court to make restitution for the overages.
- D.** Grant a jury trial on all claims so triable.
- E.** Declare that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) and certifying the Class, and designate the Named Plaintiff and Plaintiff’s counsel as the proper representative of the classes.
- F.** Award Named Plaintiff and class members compensatory and consequential damages in an amount to be determined at trial;
- G.** Award plaintiffs attorneys' fees and costs incurred in bringing this action under 42 U.S.C. § 1988 or as determined under the “common fund” rule; and
- H.** Grant such other relief as this Court deems just and proper.

<p>Respectfully submitted,</p> <p><u>/s/ William Claiborne</u> WILLIAM CLAIBORNE D.C. Bar # 446579</p> <p>Counsel for Aster Tachebele on behalf of herself and putative class members</p> <p>2020 Pennsylvania Ave, NW #395 Washington, DC 20004</p>	<p>Respectfully submitted,</p> <p><u>/s/ Ralph D. Robinson</u> RALPH D. ROBINSON D.C. Bar # 441797</p> <p>Counsel for Aster Tachebele on behalf of herself and putative class members</p> <p>2020 Pennsylvania Ave, NW #395 Washington, DC 20004</p>
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JURY DEMAND

Plaintiffs demand a jury of six as to all claims so triable.

/s/William Claiborne
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