

RETURN DATE: JUNE 11, 2013 : SUPERIOR COURT
:
JAMES A. UTECHT, individually and :
representative of others similarly situated, : JUDICIAL DISTRICT OF LITCHFIELD
: AT LITCHFIELD
v. :
:
MICHAEL MANIAGO, Chief of Police, :
Torrington Police Department, City of Torrington, :
REUBEN F. BRADFORD, Commissioner, :
Department of Emergency Services and Public :
Protection, State of Connecticut : MAY 23, 2013

COMPLAINT AND ACTION FOR INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a class action for damages and injunctive relief to stop the Commissioner of the Connecticut State Department of Emergency Services and Public Protection (DESPP) from using municipal police chiefs and elected officials to collect a \$50 fee for DESPP criminal history records checks that municipalities by state statute are entitled to at no cost. Conn. Gen. Stat. § 29-11(c).¹

¹ Section 29-11 provides, in relevant part: "... (b) Any cost incurred by the DESPP Bureau of Identification in conducting any name search and fingerprinting of applicants for admission to the bar of the state shall be paid from fees collected by the State Bar Examining Committee. (c) The Commissioner of Emergency Services and Public Protection shall charge the following fees for the service indicated: (1) Name search, thirty-six dollars; (2) fingerprint search, fifty dollars; (3) personal record search, fifty dollars; (4) letters of good conduct search, fifty dollars; (5) bar association search, fifty dollars; (6) fingerprinting, fifteen dollars; (7) criminal history record information search, fifty dollars. Except as provided in subsection (b) of this section, the provisions of this subsection shall not apply to any federal, state or **municipal agency**." (emphasis in underline and bold added)

2. To determine whether a person is suitable and meets the statutory eligibility requirements for issuance of a temporary state permit to carry pistols or revolvers (“temporary state permit”), a municipal first selectman, warden, or police chief (“local issuing authority”) conducts an investigation. Conn. Gen. Stat. § 29-28(b).

3. In conducting an investigation the local issuing authority may obtain fingerprints from the temporary state permit applicant for submission with a request from the local issuing authority that the DESPP perform a criminal history records check.

4. Since October 1, 2009, the DESPP has maintained a log of incoming requests for criminal history records checks reflecting that municipalities, and not temporary state permit applicants, as part of their investigation request criminal history records checks to determine whether an applicant is suitable and meets the statutory eligibility requirements for issuance of a temporary state permit.

5. The local issuing authority is statutorily entitled to request a criminal history records check from the DESPP at no cost.

6. On October 1, 2009, the DESPP unilaterally and absent statutory authority imposed a requirement that municipalities demand a \$50 fee from temporary state permit applicants for the DESPP criminal history records checks requested by the municipalities as part of the temporary state permit suitability and eligibility determination.

7. The DESPP has unlawfully and absent statutory authority collected in excess of \$1,000,000 through a scheme furthered by the cooperation of municipal police chiefs and elected officials to divest temporary state permit applicants of a \$50 fee for DESPP criminal history records checks requested by the municipalities that municipalities are statutorily entitled to at no cost.

8. Legislation proposed by the DESPP for the General Assembly's January 2013 Session as S.B. No. 969 would amend General Statutes § 29-11(c) to authorize the DESPP to charge municipalities a \$50 fee for criminal history records checks of applicants for temporary state permits.²

9. The proposed legislation followed a Notice and Demand to Cease and Desist dated April 11, 2012, served upon the municipalities within the State of Connecticut by CT Carry, Inc. ("CT Carry") which stated:

Accordingly, formal DEMAND is hereby made of you and all of your associates, accomplices, and accessories of whatever description, to CEASE and DESIST immediately from requiring any applicant for a temporary state permit to submit with the application a \$50.00 fee paid to the State of Connecticut/Department of Emergency Services and Public Protection for a criminal history records check.

² S.B. No. 969, § 1, would amend the last sentence of General Statutes § 29-11(c) as follows: "Except as provided in subsection (b) of this section, the provisions of this subsection shall not apply to any federal, state or **municipal agency if the individual identified in the request is seeking employment with the requesting agency.**" (emphasis in underline and bold added)

See Ex. A, April 11, 2012, Notice and Demand to Cease and Desist.

10. In its proposal to amend General Statutes § 29-11(c) the DESPP recently informed the legislature that “[u]nder existing law all criminal history records checks coming from other agencies are not subject to any state fees.” See Ex. B, Agency Legislative Proposal, 2013 Session.

11. The DESPP legislative proposal informs the legislature that the “statutory change would create a new and appropriate revenue stream.” See Ex. B, Agency Legislative Proposal, 2013 Session.

12. Since October 1, 2009, the “revenue stream” created by the \$50 fee collected by municipal police chiefs and elected officials for DESPP criminal history records checks has evaded accountability due the existence of the “revenue stream” outside the law.

13. Whether or not S.B. No. 969 becomes law, the \$50 fee collected by municipal police chiefs and elected officials from temporary state permit applicants, including from the Plaintiff and the class he represents, have been collected unlawfully and without statutory authority.

14. In proposing S.B. No. 969 the DESPP acknowledges that it has lacked statutory authority to collect the \$50 fee from temporary state applicants because, unless and until S.B. No. 969 passes, municipal police chiefs and elected officials are entitled statutorily to DESPP criminal history records checks at no cost, including requests made by the local issuing authority to the

DESPP for criminal history records checks to determine an applicant's suitability and statutory eligibility for issuance of a temporary state permit.

II. PARTIES

15. The Plaintiff James A. Utecht ("Plaintiff") obtained his temporary state permit from Chief Michael Maniago of the Torrington Police Department in May 2012.

16. The Plaintiff brings Counts One through Three in accordance with Connecticut Practice Book §§ 9-7 through 9-10 on his behalf and on behalf of all individuals who, similar to the Plaintiff, have been divested unlawfully of a \$50 fee as payment for DESPP criminal history records checks requested by municipalities in the course of conducting investigations to determine an applicant's suitability and statutory eligibility for a temporary state permit.

17. The class of individuals similarly situated to the Plaintiff is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims or defenses of the representative parties are typical of the claims or defenses of the class; and the representative parties will fairly and adequately protect the interests of the class.

18. This action meets the criteria for a class action in each of subsections (1), (2), and (3) of Practice Book § 9-8.

19. The Defendant Reuben F. Bradford ("Commissioner Bradford") is the Commissioner of the Connecticut State Department of Emergency Services and Public Protection.

20. Commissioner Bradford has general jurisdiction of the affairs of the Division of State Police within the DESPP and prescribes rules for the government of the Division of State Police.

21. The State Police Bureau of Identification (SPBI) within the Division of State Police maintains a central repository of complete criminal history record disposition information.

22. The Defendant Michael Maniago (“Chief Maniago”) is the Chief of the Torrington Police Department for the City of Torrington, Connecticut.

23. Chief Maniago is the local issuing authority for the City of Torrington.

III. FACTS

A. The Statutory Scheme for Issuance of Temporary State Permits

24. No person shall carry any pistol or revolver upon his or her person in Connecticut, except when within the residence or place of business of such person, without a permit to carry a pistol or revolver (“state permit”) as provided in § 29-28(b). Conn. Gen. Stat. § 29-35(a).

25. To obtain a state permit a person submits DESPP Form DPS-799-C³ to the local issuing authority having jurisdiction over the municipality where such person maintains a *bona fide* residence or place of business. Conn. Gen. Stat. § 29-28(b).⁴

³ “DPS” refers to the DESPP’s previous name, Department of Public Safety.

⁴ Effective October 1, 2013, P.A. 13-3, § 57, amends this section to provide the local issuing authority jurisdiction to issue temporary state permits only to those applicants having a *bone fide* residence within the municipality.

26. Upon receipt of an application from a person seeking to obtain a state permit, the local issuing authority conducts an investigation to confirm that the person is suitable to receive a state permit, is not disqualified from receiving a state permit, and intends to make no use of any pistol or revolver other than a lawful use. Conn. Gen. Stat. § 29-28(b).

27. A person is disqualified from receiving a state permit if the records investigation performed by the local issuing authority finds one or more of the statutorily enumerated factors (“disqualifiers”) in such person’s history. Conn. Gen. Stat. § 29-28(b)(3)-(10).

B. The State Criminal History Records Check

28. To determine if a person submitting an application for a temporary state permit is eligible to receive a state permit or has a record that may impact such person’s suitability, the local issuing authority forwards an applicant’s fingerprints or other positive identifying information to the DESPP requesting the results of a state criminal history records check. Conn. Gen. Stat. § 29-29(b).

29. An applicant for a temporary state permit submits an application to the local issuing authority using DESPP Form DPS-799-C.

30. Effective October 1, 2009, the DESPP amended Form DPS-799-C to require that a person applying for a state permit submit a \$50 fee to the local issuing authority for a DESPP

criminal history records check. See Ex. C, DPS-799-C (Revised 02/09) and Ex. D. DPS-799-C (Revised 10/09).

31. Prior to October 1, 2009, the DESPP did not require that an applicant submit a fee with the Form DPS-799-C for the state criminal history records check. See Ex. C, DPS-799-C (Revised 02/09).

32. Prior to October 1, 2009, the DESPP required that an applicant submit two fees to the issuing authority; the first fee paid to the local issuing authority for costs related to the processing of the application, and the second fee paid to the DESPP for payment to the Federal Bureau of Investigation (FBI) for the national criminal history records check. See Ex. C, DPS-799-C (Revised 02/09).

33. Effective October 1, 2009, the DESPP required that an applicant submit three fees to the issuing authority; the first fee paid to the local issuing authority for costs related to the processing of the application, the second fee paid to the DESPP for the state criminal history records check, and the third fee paid to the DESPP for payment to the FBI for the national criminal history records check. See Ex. D. DPS-799-C (Revised 10/09).

34. State law specifically waives the fee for a state criminal history records check when a state criminal history records check is requested by a federal, state, or local agency. Conn. Gen. Stat. § 29-11.

35. The amendment to Form DPS-799-C, effective October 1, 2009, which added the requirement that a person applying for a state permit submit a \$50 fee to the local issuing authority made payable to the DESPP for a state criminal history records check was not authorized by the Connecticut General Assembly or other lawful authority.

C. The DESPP's Response to CCDL's Petition for Declaratory Ruling

36. The position of the DESPP, as stated in an April 30, 2010, Response to a Petition submitted by Scott Wilson, President of the Connecticut Citizens Defense League (CCDL), for a Declaratory Ruling, places responsibility and therefore the legal liability for the unlawfully collected \$50 fee upon the local issuing authority. See Ex. E, DESPP Response to CCDL.

37. Former DESPP Commissioner John A. Danaher III, currently a Judge of the Superior Court, declined to take any position concerning the \$50 fee in his April 30, 2010, Response, stating: "Because the issuance of temporary state permits to carry pistols or revolvers is not the responsibility of the Department but rather that of the local issuing authorities, *see* Conn. Gen. Stat. §§ 29-28 and 29-28a, the Department declines to address the obligation of local issuing authorities." See Ex. E, DESPP Response to CCDL.

D. The Plaintiff's Application to the Torrington Police Department

38. The Plaintiff submitted an application to Torrington Police Department Chief Maniago on April 4, 2012, by Form DPS-799-C with a cover letter of protest against payment of the \$50 fee:

This letter provides notice that requiring applicants for a Temporary State Permit to submit with the application a \$50.00 fee payable to the State of Connecticut and/or the Department of Emergency Services and Public Protection for a criminal history records check is unlawful for the reasons stated in the attached draft Notice of Demand to Cease and Desist ("Notice").

See Ex. F, Letter with attached draft Notice and Demand to Cease and Desist.

39. Despite the Plaintiff's protest Chief Maniago and the DESPP required the \$50 fee to process the Plaintiff's application for a temporary state permit.

40. Despite then DESPP Commissioner Danaher's April 30, 2010, Declaratory Ruling leaving the decision whether to collect the \$50 fee to the municipal police chiefs and elected officials, Chief Maniago required the \$50 fee to process the Plaintiff's application for a temporary state permit.

41. Despite CT Carry's April 11, 2012, Notice and Demand to Cease and Desist, Chief Maniago continues to require a \$50 fee for criminal history records checks to process applications for temporary state permits.

42. Despite CT Carry's April 11, 2012, Notice and Demand to Cease and Desist, the DESPP continues to use municipal police chiefs and elected officials to collect a \$50 fee for criminal history records checks to process applications for temporary state permits.

E. Notice and Demand to Cease and Desist

43. In a Notice and Demand to Cease and Desist dated April 11, 2012, served upon the municipalities within the State of Connecticut, CT Carry provided notice:

Accordingly, formal DEMAND is hereby made of you and all of your associates, accomplices, and accessories of whatever description, to CEASE and DESIST immediately from requiring any applicant for a temporary state permit to submit with the application a \$50.00 fee paid to the State of Connecticut/Department of Emergency Services and Public Protection for a criminal history records check.

44. In response, the Town of Windsor provided notice to temporary state permit applicants on May 3, 2012, that its local issuing authority would accept applications without the \$50 fee for submission to the DESPP for criminal history records checks but warned that doing so could result in a rejection of the application by the DESPP.⁵ See Ex. G, Letter Regarding Required Pistol Permit Fees..

⁵ However, temporary state permit applications are not submitted to the DESPP so it is unclear how the DESPP could reject a temporary state permit application. Local issuing authorities, not the DESPP, issue or deny temporary state permits.

45. The Torrington Police Department refused to accept the Plaintiff's application for a temporary state permit on April 4, 2012, without the \$50 fee to obtain a criminal history records check from the DESPP.

F. The Destruction of DESPP Criminal History Records

46. Prior to filing the April 12, 2012, Notice and Demand to Cease and Desist, CT Carry and American News and Information Services, Inc. ("American News") sought information about and filed Freedom of Information Act (FOIA) requests to clarify the origin and authority for the October 1, 2009, imposition of the \$50 fee.

47. In a March 6, 2012, request, American News requested data regarding the process of obtaining state criminal histories from SPBI.

48. On March 9, 2012, SPBI Supervisor Cynthia Powell requested the disposal of reports and criminal records responsive to American News FOIA request.

49. The DESPP informed American News on March 13, 2012, that "it would take approximately two weeks to complete the programming to extract the information requested."

50. On March 23, 2012, the Office of the Public Records Administrator, unaware of American News' pending FOIA request, approved SPBI Supervisor Cynthia Powell's March 6, 2012, request to destroy records responsive to American News' March 6, 2012, request.

51. On March 28, 2012, data responsive to American News' March 6, 2012, FOIA request was purged from DESPP's computer systems.

IV. VIOLATIONS AND CLAIMS

COUNT ONE

PROCEDURAL AND SUBSTANTIVE DUE PROCESS

U.S. Const., amend. XIV, § 1; 42 U.S.C. §§ 1983, 1988

Conn. Const. art. 1, §§ 8, 11

***Against City of Torrington for Monetary Damages, Injunctive Relief,
and Attorney's Fees and Costs***

Against State of Connecticut for Injunctive Relief and Attorney's Fees and Costs

52. Paragraphs 1-51 are incorporated in Count One as pleaded.

53. The \$50 fee constitutes a taking imposed upon applicants for temporary state permits without notice or an opportunity to be heard through the representative processes.

54. Our state legislators, acting as representatives of their Connecticut constituents, never authorized the \$50 fee.

55. The DESPP submission of a legislative proposal for the General Assembly's January 2013 Session to impose a \$50 fee while concealing from the legislature that the \$50 fee has been assessed against applicants for temporary state permits since October 1, 2009, is an admission that our state legislators were denied notice and opportunity to be heard prior to the October 1, 2009, imposition.

56. In addition to the Plaintiff, between March 2012 and March 2013, 13,620 temporary

state permits were issued in Connecticut each requiring the submission of a \$50 fee to the local issuing authority. Additional temporary state permits were issued by local issuing authorities between October 2009 and March 2012.

57. The City of Torrington and other local issuing authorities, in addition to requiring a \$50 fee from applicants issued temporary state permits, also required a \$50 fee from applicants who ultimately were denied temporary state permits since October 1, 2009.

58. The City of Torrington and every municipal police chief or elected official, as applicable, in the State of Connecticut condoned and accepted the unlawful \$50 fee despite a Notice and Demand to Cease and Desist served in April 2012.

59. The City of Torrington ignored a letter of protest against the \$50 fee submitted with the Plaintiff's April 4, 2012, application for a temporary state permit.

60. The \$50 fee is a deprivation of property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and the Connecticut Constitution.

61. The Plaintiff has suffered monetary damages of \$50, similar to all those who have applied since October 1, 2009, for temporary state permits from local issuing authorities in Connecticut.

COUNT TWO
CONNECTICUT UNFAIR TRADE PRACTICES ACT
CONN. GEN. STAT. §§ 42a-110a et seq.
Against City of Torrington for Monetary Damages, Injunctive Relief,
and Attorney's Fees and Costs

62. Paragraphs 1-61 are incorporated in Count Two as pleaded.

63. The City of Torrington's practice of requiring an unlawful \$50 fee since October 1, 2009, from applicants for temporary state permits is an actual deceptive practice.

64. The City of Torrington's practice of requiring an unlawful \$50 fee since October 1, 2009, from applicants for temporary state permits is a practice amounting to a violation of public policy.

65. The requirement that applicants for temporary state permits submit a \$50 fee for DESPP criminal history records checks that are provided at no costs to the requesting local issuing authority is immoral, unethical, oppressive, and unscrupulous.

66. The \$50 fee is not permitted under law.

67. The City of Torrington in requiring the \$50 fee as a condition for submitting an application for a temporary state permit has not acted under statutory authority of the state or of the United States.

68. The Plaintiff has suffered monetary damages of \$50, similar to all those who have applied since October 1, 2009, for temporary state permits from local issuing authorities in Connecticut.

COUNT THREE
CONNECTICUT UNFAIR TRADE PRACTICES ACT
CONN. GEN. STAT. §§ 42a-110a et seq.
*Against State of Connecticut for Monetary Damages, Injunctive Relief,
And Attorney's Fees and Costs*

69. Paragraphs 1-61 are incorporated in Count Three as pleaded.

70. The DESPP's unilateral imposition of a \$50 fee since October 1, 2009, to conduct criminal history records checks requested by municipalities is an actual deceptive practice.

71. The DESPP's unilateral imposition of a \$50 fee since October 1, 2009, to conduct criminal history records checks requested by municipal police chiefs and elected officials is a practice amounting to a violation of public policy.

72. The requirement that applicants for temporary state permits submit a \$50 fee for DESPP criminal history records checks that are provided at no cost to the requesting local issuing authority is immoral, unethical, oppressive, and unscrupulous.

73. The \$50 fee is not permitted under law.

74. The DESPP in requiring the \$50 fee as a condition for submitting an application for a temporary state permit has not acted under statutory authority of the state or of the United States.

75. The Plaintiff has suffered monetary damages of \$50, similar to all those who have applied since October 1, 2009, for temporary state permits from local issuing authorities in Connecticut.

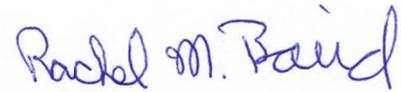
PRAYER FOR RELIEF

WHEREFORE, the Plaintiff claims on his behalf and on behalf of all those similarly situated described herein as the class:

- A. Monetary damages;
- B. Punitive damages;
- C. An injunction prohibiting the DESPP and municipal police chiefs and elected officials in Connecticut, designated as local issuing authorities with the jurisdiction to accept applications for temporary state permits and to make determinations as to suitability and statutory eligibility for issuance of temporary state permits, from demanding an unlawful \$50 fee from applicants for criminal history records checks requested by municipal police chiefs and elected officials in the performance of their duty under the law to investigate applicants.
- D. An injunction compelling Chief Maniago to return each and every \$50 fee for criminal history background checks collected from applicants for temporary state permits.
- E. Interest;
- F. Attorney's fees; and
- G. Such other relief as the Court deems appropriate.

PLAINTIFFS

JAMES A. UTECHT, individually and
representative of others similarly situated



BY: _____

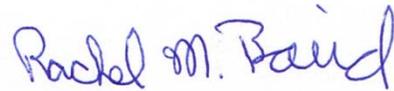
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STATEMENT OF AMOUNT IN DEMAND

The amount in demand is more than Fifteen-Thousand United States Dollars
(\$15,000.00) exclusive of interest and costs.

PLAINTIFFS
JAMES A. UTECHT, individually and
representative of others similarly situated



BY: _____

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