

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10-CVS-019930

**BRIAN CECCARELLI and LORI
MILLETTE, individually and as class
representatives,**

Plaintiffs,

v.

TOWN OF CARY

Defendant.

)
)
) **NOTICE OF CLASS ACTION**
)
)
)
)
)

**TO ALL PERSONS DESCRIBED BELOW WHO WERE ASSESSED A CIVIL
PENALTY. YOU ARE NOT BEING SUED. THIS IS A NOTICE OF A CLASS ACTION
LAWSUIT FILED ON YOUR BEHALF. YOU NEED NOT RESPOND TO THIS
NOTICE.**

I. The Class

On June 19, 2012, Superior Court Judge Paul C. Ridgeway determined that this lawsuit should proceed as a class action. The Class consists of all persons who were assessed a civil penalty for violation of Cary Ord. § 34-303 at the following intersections and times:

- (1) At the intersection of Cary Towne Boulevard and Convention Drive from December 2, 2009 through March 19, 2010.
- (2) Between August 1, 2010 through the date of trial while making a left turn maneuver at the following intersections:
 - a. Traveling westbound on Maynard Road and turning left onto Kildaire Farm Road;
 - b. Traveling westbound on Cary Parkway and turning left onto Kildaire Farm Road;
 - c. Traveling northbound on Kildaire Farm Road and turning left onto Cary Parkway;
 - d. Traveling northbound on Cary Parkway and turning left onto High House Road;
 - e. Traveling southbound on Walnut Street and turning left onto Meeting Street.

This Notice describes the lawsuit and tells you about: (1) your right to exclude yourself from the lawsuit and not be bound by the judgment in this case; and (2) how you can get additional information about this lawsuit. This Notice is not an expression by the Court as to the merits of any claim or defense asserted by the parties to this litigation.

II. Information About the Lawsuit

This lawsuit was filed by Brian Ceccarelli and Lori Millette, on behalf of themselves and others similarly situated against the Town of Cary. Plaintiffs challenge the application, at certain street intersections, of Cary's ordinance making it unlawful for a vehicle to cross the stop line into an intersection toward which an automated traffic control photographic system (a.k.a. "red light

camera”) is in operation when the traffic signal for that vehicle’s direction of travel is emitting a steady red light. Any violation of this ordinance is a civil violation for which a civil penalty of \$50 is assessed by the Town of Cary. Plaintiffs assert that in order to operate a red light camera, the Town of Cary Charter required that the yellow light duration of the traffic signal where such a camera was installed be no less than the interval specified in the N.C. Department of Transportation Design Manual.

When traveling eastbound on Cary Towne Boulevard crossing its intersection with Convention Drive, Plaintiff Ceccarelli alleges that the speed limit on the relevant portion of Cary Towne Boulevard was 45 mph, that the NCDOT traffic signal plan of record was based on an incorrect speed limit of 35 mph, and that the yellow light duration for the intersection’s traffic signal was less than that would have been required by an accurate calculation of clearance time. Plaintiff Ceccarelli therefore asserts that he was unable to safely stop his vehicle before the traffic signal turned red in his respective path of travel. Plaintiff Ceccarelli asserts that the traffic signal plan that he contends was inaccurate was used until March 2010, and that this inaccuracy caused the duration of the yellow light to be less than the interval specified by the N.C. Department of Transportation and/or the Town Charter, and therefore, the utilization of automated traffic control photographic system at the intersection of Cary Towne Boulevard and Convention Center Drive was unlawful.

Plaintiff Millette alleges that that she was unlawfully cited when she traveled north on Kildaire Farm Road and turned left at the intersection of Kildaire Farm Road and Cary Parkway. This intersection has an automated traffic control photographic system. The posted speed limit for the relevant portion of Kildaire Farm Road was 45 mph. However, Plaintiffs assert that the duration of the left turn yellow light arrow for this intersection and the following intersections was determined using the assumption that the vehicles turning left would be traveling 20 to 30 mph:

- a. Traveling westbound on Maynard Road and turning left onto Kildaire Farm Road;
- b. Traveling westbound on Cary Parkway and turning left onto Kildaire Farm Road;
- c. Traveling northbound on Kildaire Farm Road and turning left onto Cary Parkway;
- d. Traveling northbound on Cary Parkway and turning left onto High House Road;
- e. Traveling southbound on Walnut Street and turning left onto Meeting Street.

Plaintiffs contend that this assumption is not consistent with sound engineering principles and that it is not consistent with the interval specified in the NCDOT Design Manual, and therefore, the utilization of automated traffic control photographic system by the Defendant at these intersections was unlawful.

Plaintiffs seek to have the utilization of automatic traffic control photographic systems at the identified intersections during the specified time frame declared unlawful and to obtain refunds for all class members who have received citations that they have paid or will pay during the pendency of this lawsuit.

You do not need to take any further action to remain a member of the Class.

III. Right to Exclude Yourself from the Class Action

If you wish to be excluded from the class, you must send written notice stating that you choose to opt out of the class. The written notice must be delivered or postmarked no later than November 30, 2012. If you wish to be excluded from the Class, you must complete the "Notice to Opt Out of Class Action" included as part of this Notice of Class Action and mail it to Class Counsel, Stam & Danchi, PLLC, P.O. Box 1600, Apex, NC, 27502.

If you choose to be excluded from this class action, you will not receive any benefits of this class action, nor will you be bound by any adverse rulings in this action. If you do not ask to be excluded in writing you will automatically continue to be a part of this Class and the class action, and will be bound by the Court's final decision.

If you want to remain a member of the Class you should NOT fill out or return the "Notice to Opt Out of Class Action" form.

IV. Further Questions Regarding this Law Suit and the Settlement

If you have questions about this class action lawsuit, you may contact the Class Counsel by writing, emailing or calling using the contact information below:

Paul Stam & Caroline E. Nickel, Attorneys
Stam & Danchi, PLLC
P.O. Box 1600
Apex, NC 27502
Email: paulstam@bellsouth.net
carolinenickel@bellsouth.net
Tel: (919) 362-8873
Fax: (919) 387-7329

William W. Peaslee
Attorney At Law, PLLC
102-K Commonwealth Court
Cary, NC 27511
Email: peaslaw@aol.com
Tel: (919) 481-1992
Fax: (919) 481-2919

Or you may contact Defendant Town of Cary's Counsel by writing, emailing or calling using the contact information below:

Elizabeth A. Martineau, Attorney
MARTINEAU KING PLLC
P.O. Box 31188
Charlotte, NC 28231
Email: EMartineau@martineauking.com
Tel: (704)247-8524
Fax: (704)943-0543

V. Additional Information

The pleadings and other records in this lawsuit may be examined at any time during regular office hours at the office of the Clerk of the Superior Court of Wake County, 316 Fayetteville Street Raleigh, NC 27601. Do not write or telephone the Clerk's Office or Judge Ridgeway. They will not be able to answer your questions about this case.

This Notice shall be published once in the Raleigh News and Observer and Cary News and posted on the Town of Cary's website.

SO ORDERED, this the ____ day of August, 2012.

The Honorable Paul C. Ridgeway
Judge, Wake County Superior Court

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10-CVS-019930

**BRIAN CECCARELLI and LORI
MILLETTE, individually and as class
representatives,**
Plaintiffs,
v.
TOWN OF CARY
Defendant.

)
)
) **NOTICE TO OPT OUT OF CLASS**
) **ACTION**
)
)

The undersigned has read the Notice of Class Action, and does **not** wish to remain a member of the Class. Thus, the undersigned hereby gives notice that the entity or person listed below hereby exercises its option to exclude itself from this class action.

1. _____
(Print Name, Phone Number, & Email Address of person opting out of class action)

2. _____
(Print Mailing Address of person opting out of class action)

By: _____ Date _____
(Signature of person opting out of class action)

Mail to: Class Counsel, Stam & Danchi, PLLC
P.O. Box 1600
Apex, NC, 27502