

STATE OF NORTH CAROLINA
CARTERET COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 403

GEORGE ROBERT ARMISTEAD, JR.,)
MADISON ARMISTEAD, GREG)
RHODES, and WILLIAM YATES,)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

COUNTY OF CARTERET,)

Defendant.)

**FIRST AMENDED COMPLAINT
(Class Action)**

DEMAND FOR JURY TRIAL

NOW COME Plaintiffs George Robert Armistead, Jr., Madison Armistead, Greg Rhodes, and William Yates (hereinafter "Plaintiffs"), through undersigned counsel, complaining of Defendant County of Carteret (hereinafter "Defendant" or the "County") and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs, on behalf of themselves and others similarly situated, bring this action as a collection action to obtain redress arising from the County's collection of two (2) unlawful solid waste fees, namely "Green Box Fees" and "Landfill Fees" (collectively, "Solid Waste Fees" or "Fees").

2. For the reasons shown herein, and/or for other reasons to be shown at trial, the County's Solid Waste Fees are unlawful and *ultra vires* because the Fees exceed the County's statutory authority to charge solid waste fees under Article 15 of Chapter 153A of the North Carolina General Statutes, and because the Fees violate the County's Code of Ordinances §§ 14-56 to 14-59 (the "Ordinance").

3. Therefore, Plaintiffs, on behalf of themselves and others similarly situated, seek a refund of all illegally charged Solid Waste Fees.

4. This case arises under North Carolina common law, the North Carolina Constitution, and the Uniform Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 *et seq.* Further, this is a class action, filed pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.

JURISDICTION AND VENUE

5. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

6. This Court has jurisdiction over the parties and this action pursuant to N.C. Gen. Stat. § 1-254 because the rights of Plaintiffs are directly and adversely affected by the Ordinance.

7. Venue is proper under N.C. Gen. Stat. § 1-82 in that Defendant is a body politic and corporate in Carteret County, North Carolina.

8. A copy of this First Amended Complaint has been served on the Attorney General of North Carolina pursuant to N.C. Gen. Stat. § 1-260.

9. Pursuant to N.C.R. Civ. Proc. 15(a), Plaintiffs file this First Amended Complaint with the written consent of Defendant.

10. All conditions precedent to the filing of this action have been performed or have occurred.

PARTIES

11. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

12. Plaintiff George Robert Armistead, Jr. ("Robbie Armistead") is a resident of

Wake County, North Carolina. At all times alleged herein, Robbie Armistead owned real property in Carteret County, North Carolina and was unlawfully charged Solid Waste Fees by Defendant, yet Robbie Armistead paid these fees.

13. Plaintiff Madison Armistead ("Madison Armistead") is a resident of Wake County, North Carolina. At all times alleged herein, Madison Armistead owned real property in Carteret County, North Carolina and was unlawfully charged Solid Waste Fees by Defendant, yet Madison Armistead paid these fees.

14. Plaintiff Greg Rhodes ("Rhodes") is a resident of Wake County, North Carolina. At all times alleged herein, Rhodes owned real property in Carteret County, North Carolina and was unlawfully charged Solid Waste Fees by Defendant, yet Rhodes paid these fees.

15. Plaintiff William Yates ("Yates") is a resident of Wake County, North Carolina. At all times alleged herein, Yates owned real property in Carteret County, North Carolina and was unlawfully charged Solid Waste Fees by Defendant, yet Yates paid these fees.

16. Defendant County of Carteret is a body politic and corporate with the capacity to be sued as provided in N.C. Gen. Stat. § 153A-11.

17. The County is not entitled to any governmental or sovereign immunity because its conduct alleged herein constitutes non-governmental and/or propriety functions, including but not limited to the County's operation of a public enterprise in the form of a solid waste disposal system and facility.

18. Furthermore, governmental or sovereign immunity do not apply to the claims asserted herein, and the County has waived any governmental or sovereign immunity, including but not limited to the extent it has purchased insurance or participates in a risk pool arrangement or is self-insured.

BACKGROUND

19. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

I. General Information About The County's Solid Waste Public Enterprise.

20. At all relevant times, Defendant, through its contractor, has operated twelve (12) sites which the County makes available for certain taxpayers to dispose of solid wastes. These sites are referred to as "Green Box Sites."

21. Defendant's operation of the Green Box Sites constitutes a public enterprise as defined in N.C. Gen. Stat. §§ 153A-274 *et seq.* (the "Public Enterprise Statutes").

22. Pursuant to N.C. Gen. Stat. § 153A-292(b), a county is permitted to charge only three (3) types of public enterprise fees related to solid wastes:

- a. "Collection fees" imposed on individuals or entities that contract with the county for solid waste collection or hauling services;
- b. "Use fees," also known as "disposal fees," imposed on individuals or entities for the actual use of the county's solid waste disposal facilities; and
- c. "Availability fees" imposed on improved property in the county for the availability of solid waste disposal facilities provided by the county.

23. Defendant adopted the Ordinance on March 9, 1993, and the Ordinance was later amended on August 20, 2007. A true and accurate copy of the Ordinance as amended on August 20, 2007 is attached hereto as **Exhibit A** and is incorporated by reference as if fully set forth herein.

24. Pursuant to Ordinance § 14-56, the County imposes two types of solid waste public enterprise fees upon its taxpayers:

a. "An annual disposal fee," which the County presently refers to as a Green Box Fee; and

b. "[A]n availability fee," which the County presently refers to as an Landfill Fee.

25. The County does not perform any curbside solid waste collection and therefore cannot charge a "collection fee."

26. The County charges the Landfill Fee pursuant to Ordinance § 14-56, which states that "[a]ll residential households and improved commercial properties in the county, whether inside a municipality or not, *may be charged an availability fee* based upon optional use privileges at county solid waste convenience sites, in accordance with a current schedule of fees adopted by the board of commissioners." (emphasis added)

27. The Landfill Fee purports to be an "availability fee" under N.C. Gen. Stat. § 153A-292(b).

28. The Landfill Fee is \$15 per year and is charged on the annual ad valorem tax bill to every residential property owner and improved commercial property owner within the County.

29. The County also charges the Green Box Fees pursuant to Ordinance § 14-56, which states that "[a]n annual disposal fee . . . will be charged to each residential household in the county which does not have household waste collection service. Residential households within incorporated municipalities will not be billed for disposal fees if municipal or private collection services are servicing those properties."

30. Ordinance § 14-57 states that the Green Box Fee "is intended to recover the costs of disposing of solid waste from *households utilizing the county provided solid waste and recycling collection sites* [i.e., the Green Box Sites]" (emphasis added).

31. The County's "Frequently Asked Billing Questions" section of its website (the

"Billing FAQ") similarly states that the Green Box Fee "*is for the use of the county provided collection solid waste* [sic] for those county residents who do not have municipal or contract collection" (emphasis added).

32. A true and accurate copy of the County's Billing FAQ is attached hereto as **Exhibit B** and incorporated by reference as if fully set forth herein.

33. The Green Box Fee purports to be "use fee," also known as a "disposal fee," under N.C. Gen. Stat. § 153A-292(b).

34. As described more fully below, the Green Box Fee is \$165 per year and is charged on the annual ad valorem tax bill to certain real property owners within the County.

35. There are several popular private waste collection services operating within both the incorporated and unincorporated areas of Carteret County, including but not limited to Waste Industries d/b/a GFL Environmental.

36. Furthermore, several municipalities within Carteret County offer waste collection services.

37. The County is aware of the private and municipal solid waste collection services operating within Carteret County.

38. By the terms of its own Ordinance § 14-56, the County purports to exempt from payment of the Green Box Fees all taxpayers whose properties are serviced by a municipal or private solid waste collection service.

39. In practice, however, at all relevant times hereto, the County has charged, and continues to charge, Green Box Fees to *every* owner of developed residential real property within unincorporated areas of the County, including but not limited to properties serviced by private waste collection services.

40. Moreover, at all relevant times, the County has charged, and continues to charge, Green Box Fees to many developed residential real properties within incorporated areas of the County that are serviced by private and/or municipal waste collection.

41. Presently, the Green Box Fee and the Landfill Fee appear as small line items on the County's annual ad valorem tax bills.

42. The said ad valorem tax bills provide no explanation of the basis or purpose of the Solid Waste Fees, and the said ad valorem tax bills do not provide notice that its recipient does not owe the Green Box Fee if the taxpayer has arranged for private waste collection or receives municipal solid waste collection.

43. Prior to being referred to as "Green Box Fees" and "Landfill Fees," the County imposed the same illegal Solid Waste Fees on annual ad valorem tax bills using the nondescript name "Special Assessments."

44. The County's taxpayers are provided no notice or reason to suspect that they do not owe Green Box Fees if they have private or municipal solid waste collection.

II. The County's Green Box Fees Are Illegal and *Ultra Vires*.

45. The County's charge and collection of Green Box Fees is illegal and *ultra vires* because the Green Box Fees are in excess of the County's lawful authority to charge solid waste fees under the Public Enterprise Statutes, and furthermore because the Green Box Fees are in violation of the County's own adopted Ordinance and stated policies.

A. The Public Enterprise Statutes

46. A county's imposition of public enterprise fees, including solid waste use and availability fees, must be permitted by statute in order to be valid. *See, e.g., Lanvale Properties LLC v. Cnty. Of Cabarrus*, 366 N.C. 142, 731 S.E.2d 800 (2012); *Durham Land Owners Assoc.*

v. *Cnty. Of Durham*, 177 N.C. App. 629, 630 S.E.2d 200 (2006).

47. The Public Enterprise Statutes, specifically N.C. Gen. Stat. § 153A-277(a), states that “[a] county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for *the use of or the services furnished or to be furnished by* a public enterprise” (emphasis added).

48. N.C. Gen. Stat. § 153A-292(b) expressly provides that a solid waste use fee, such as the Green Box Fee, “*may be imposed only on those who use the facility*” (emphasis added).

49. Therefore, under the Public Enterprise statutes, including N.C. Gen. Stat. §§ 153A-277(a) & -292(b), the County may impose Green Box Fees only upon persons using the Green Box Sites.

50. In fact, other counties typically charge solid waste “use fees” on a “per use basis.”

51. There is no lawful authority for the County to charge *all* owners of improved real property with a fixed, annual solid waste “use fee,” regardless of whether the property owner actually uses the Green Box Sites, and regardless of whether the property owner receives service from a municipal or private solid waste collection service.

52. The County charges numerous taxpayers with an annual Green Box Fee, despite said taxpayers not actually using the Green Box Sites.

53. In fact, the County does not know which taxpayers use the Green Box Sites, the County has undertaken no efforts whatsoever to track or identify which of its taxpayers use the Green Box Sites, and the County knows that many of the taxpayers charged with Green Box Fees are not using the Green Box Sites.

54. Nonetheless, the County knowingly maintains a system of charging its taxpayers Green Box Fees without knowing whether the fees are valid.

55. Further, the County is imposing Green Box Fees upon numerous taxpayers who have private or municipal solid waste collection, and therefore have no need for the Green Box Sites.

56. According to N.C. Gen. Stat. §§ 153A-277(a) & -292(b), the County's taxpayers who have private or municipal solid waste collection and/or who are not using the Green Box Sites may not be charged a "use fee" such as a Green Box Fee.

57. The County is aware that numerous of its taxpayers who are being charged Green Box Fees have private or municipal waste collection and/or are not using the Green Box Sites and therefore do not owe a Green Box Fee, yet it continues to send invoices to these taxpayers for the Green Box Fee.

58. For these reasons, the County's Green Box Fees are in violation of the Public Enterprise Statutes, and the Green Box Fees must be refunded by the County for all years within the applicable statute of limitations.

B. The Ordinance

59. Ordinance § 14-56 authorizes the County to impose Green Box Fees ***only upon developed residential households which are not serviced by private or municipal waste collection services.***

60. In violation of the Ordinance, the County knowingly maintains a system of charging the annual Green Box Fee to ***every*** taxpayer who owns developed residential real property within unincorporated areas of the County, irrespective of whether the taxpayer has contracted for solid waste collection service.

61. Also in violation of the Ordinance, and upon information and belief, the County charges the annual Green Box Fee to many taxpayers owning developed residential real property

within incorporated areas of the County despite the said taxpayers being serviced by private or municipal solid waste collection.

62. The County is aware that numerous taxpayers are receiving and paying bills for Green Box Fees which the said taxpayers do not owe because they have contracted for private waste collection or receive municipal waste collection.

63. Despite its awareness that its billings violate the Ordinance, the County nonetheless imposes and collects Green Box Fees from taxpayers who do not owe the fees.

64. The County knowingly and intentionally charges Green Box Fees to taxpayers who, by the express terms of the County's own Ordinances, do not owe Green Box Fees.

65. The County is aware that numerous taxpayers are receiving and paying bills for Green Box Fees which the said taxpayers do not owe.

66. Despite its awareness that its billings violate the Ordinance, the County nonetheless imposes and collects Green Box Fees from taxpayers who do not owe the fees.

III. The County's Solid Waste Fees Are Invalid Because the County Is Generating More in Solid Waste Fee Revenues Than the Cost of Operating the Green Box Sites.

67. The Public Enterprise Act, specifically N.C. Gen. Stat. § 153A-292(b), states that a disposal fee, such as the Green Box Fees, "may not exceed the cost of operating the facility" and "may only be used to cover the costs of operating the facility."

68. Moreover, N.C. Gen. Stat. § 153A-292(b) states that an availability fee, such as the Landfill Fees, "may not exceed the cost of providing the facility."

69. Therefore, the Public Enterprise Act prohibits the County from generating revenue from the Solid Waste Fees which exceeds the cost of operating the Green Box Sites.

70. In violation of N.C. Gen. Stat. § 153A-292(b), the County's revenue from Solid Waste Fees has exceeded the County's costs of operating the Green Box Sites during at least the

following fiscal years, among other fiscal years to be proved through discovery and at trial:

- a. Fiscal Year 2016-2017; and
- b. Fiscal Year 2017-2018.

71. Additionally, the County's Board of Commissioners has approved budgets which intentionally planned for the County to generate more revenue from Solid Waste Fees than the cost to operate the Green Box Sites during the following fiscal years, among other fiscal years to be proved through discovery and at trial:

- a. Fiscal Year 2016-2017;
- b. Fiscal Year 2017-2018;
- c. Fiscal Year 2018-2019;
- d. Fiscal Year 2019-2020; and
- e. Fiscal Year 2020-2021.

72. Therefore, the County is intentionally operating its Green Box Sites in order to generate a profit in violation of the Public Enterprise Statutes.

73. For all years during which the revenue generated from Solid Waste Fees exceeded the costs to operate the Green Box Sites, the Solid Waste Fees violated the Public Enterprise Statutes, were invalid, and should be refunded.

FACTS SPECIFIC TO PLAINTIFFS

74. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

75. Plaintiffs Robbie Armistead and Madison Armistead own a condominium at Mariner's Point located in Salter Path, Carteret County, North Carolina. Plaintiffs Robbie Armistead and Madison Armistead were charged Solid Waste Fees by Defendant, and paid the

said fees.

76. By way of example but not limitation, Plaintiffs Robbie Armistead and Madison Armistead paid were charged and paid Green Box Fees every year from 2015 to 2019, and they were charged and paid Landfill Fees every year from 2011 to 2020.

77. Plaintiff Rhodes owns a condominium at Mariner's Point located in Salter Path, Carteret County, North Carolina. Plaintiff Rhodes was charged Solid Waste Fees by Defendant, and paid the said fees.

78. By way of example but not limitation, Rhodes was charged and paid Green Box Fees every year from 2015 to 2019, and he was charged and paid Landfill Fees every year from 2011 to 2020.

79. Plaintiff Yates owns a condominium at Mariner's Point located in Salter Path, Carteret County, North Carolina. Plaintiff Yates was charged Solid Waste Fees by Defendant, and paid the said fees.

80. By way of example but not limitation, Yates was charged and paid Green Box Fees every year from 2011 to 2019, and he was charged and paid Landfill Fees every year from 2011 to 2020.

81. However, during these years that Defendant charged Plaintiffs with Solid Waste Fees, including Green Box Fees, Plaintiffs had each arranged and paid for private waste collection, did not use the Green Box Sites, and did not owe the Green Box Fees.

82. Furthermore, as described more fully above, during some or all of the years that Defendant charged Plaintiffs with Solid Waste Fees, Defendant generated more in Solid Waste Fees revenue than the cost of operating the Green Box Sites.

83. During these years and for all years during the applicable statute of limitations

period, Defendant did not have authority to charge and collect Solid Waste Fees from Plaintiffs.

COMMON CLASS ALLEGATIONS

84. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

85. Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiffs bring this action individually and on behalf of the following classes initially defined as follows:

The Green Box Fees / Cost-to-Operate Class

All natural persons, corporations or other entities who at any point within the applicable statute of limitations period was charged a Green Box Fee and paid a Green Box Fee during a year that the County's Solid Waste Fees revenue exceeded the cost to operate the Green Box Sites.

The Green Box Fees / Failure-to-Provide-Services Class:

All natural persons, corporations or other entities who at any point within the applicable statute of limitations period was charged a Green Box Fee and paid a Green Box Fee even though they did not use a Green Box Site.

The Green Box Fees / Private or Municipal Services Class:

All natural persons, corporations or other entities who at any point within the applicable statute of limitations period was charged a Green Box Fee and paid a Green Box Fee even though their property was served by a municipal or private solid waste collection service.

The Landfill Fees Class:

All natural persons, corporations or other entities who at any point within the applicable statute of limitations period was charged a Landfill Fee and paid a Landfill Fee during a year that the County's Solid Waste Fees revenue exceeded the cost to operate the Green Box Sites.

86. The Green Box Fees / Cost-to-Operate Class, Green Box Fees / Failure-to-Provide-Services Class, Green Box Fees / Private or Municipal Services Class, and Landfill Fees Class are collectively referred to herein as the "Classes," and members of the Classes are referred to herein as "Class Members."

87. Excluded from the Classes are all employees or commissioners of Carteret County, the legal representatives of Carteret County, and any judicial officer assigned to this matter or his/her immediate family.

88. Plaintiffs are adequate representatives of the Classes in that Plaintiffs do not have antagonistic or conflicting claims with the other Class Members, and Plaintiffs have a sufficient interest in the outcome to ensure vigorous advocacy.

89. Plaintiffs' counsel have the requisite qualifications and experience to conduct the proposed litigation competently and vigorously.

90. Defendant has acted on grounds generally applicable to the proposed Classes, thereby making appropriate final injunctive and declaratory relief with respect to the Classes as a whole.

91. The Class Members are so numerous that joinder of all is impractical. The names and addresses of potential Class Members are readily identifiable through the business records maintained by Defendant, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

92. Upon information and belief, within the applicable statute of limitations period preceding the filing of Plaintiffs' Complaint and until present, Defendant has collected unlawful Solid Waste Fees from hundreds of potential Class Members.

93. The requirements of Rule 23 are met in that the Classes, upon information and belief, consist of hundreds of present and former entities and individuals, who have either already paid, or will pay, improper Solid Waste Fees to Carteret County.

94. Common questions of law and fact predominate over any individual issues that may be presented, because Defendant had a pattern, practice, and policy of collecting said

improper Solid Waste Fees from individuals and entities.

95. Plaintiffs' claims are typical of the claims of each Class Member and all are based on the same facts and legal theories in that Carteret County has a specific policy of collecting improper Solid Waste Fees from each member of the proposed Classes.

96. Plaintiffs have no interests adverse or antagonistic to the interests of other Class Members.

97. Plaintiffs will fairly and adequately protect the interests of the Classes and have retained experienced counsel, competent in the prosecution of collection of unlawful governmental fees in the context of class action litigation.

98. Neither Plaintiffs nor their counsel have any interests that might cause them not to vigorously pursue this action.

99. Plaintiffs are aware of their responsibilities to the putative Classes and have accepted such responsibilities.

100. Defendant has acted on grounds generally applicable to the Classes.

101. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted.

102. Plaintiffs anticipate that no unusual difficulties are likely to be encountered in the management of this class action. Plaintiffs further allege that certification of the Classes is appropriate in that:

- a. A class action will permit a large number of similarly situated persons and/or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender;

- b. Each and every member of the proposed Classes is subject to the Solid Waste Fees as set forth herein;
- c. Class treatment will permit the adjudication of relatively small claims by many Class Members who could not otherwise afford to seek legal redress for the wrongs complained of herein; and
- d. Absent a class action, the Class Members will continue to suffer losses of protected rights as well as monetary damages, and if Defendant's conduct continues to proceed without remedy, it will continue to reap and retain the proceeds of its unlawful collections.

FIRST CLAIM FOR RELIEF

(Declaration that the County's Ordinance and Solid Waste Fees are *Ultra Vires* and All *Ultra Vires* Fees Should be Refunded)

103. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

104. Pursuant to N.C. Const. Art. VII, § 1, N.C. Gen. Stat. §§ 153A-274 *et seq.*, and other applicable legal authority, counties in North Carolina only have the authority to collect public enterprise fees, such as solid waste disposal and availability fees, pursuant to the powers, duties, privileges and immunities conferred upon them by the General Assembly.

105. Further, the County's Ordinances are "binding rules of conduct" which the County is bound to follow. *Kearney v. County of Durham*, 99 N.C. App. 349, 351 (1990); *Wilkins v. Guilford County*, 158 N.C. App. 661, 668 (2003).

106. For all of the foregoing reasons, the Ordinance, and the Green Box Fees and Landfill Fees charged thereunder, are in violation of the Public Enterprise Statutes.

107. Further, for all of the foregoing reasons, the Green Box Fees and the Landfill Fees

are in violation of the County's Ordinance.

108. Plaintiffs are entitled to a Declaratory Judgment Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.* declaring that Carteret County's Solid Waste Fees are *ultra vires* and invalid.

109. Plaintiffs and Class Members are entitled to the recovery of all Solid Waste Fees paid by them during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest.

SECOND CLAIM FOR RELIEF
(Violation of the Public Enterprise Statutes)

110. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

111. Pursuant to the Public Enterprise Statutes, including N.C. Gen. Stat. §§ 153A-277(a) & -292(b), a county can impose solid waste use fees only upon citizens using the solid waste facility.

112. In violation of the Public Enterprise Statutes, and as described more fully above, the County is charging Green Box Fees upon Plaintiffs and Class Members despite the fact that Plaintiffs and Class Members are not using the Green Box Sites.

113. Pursuant to the Public Enterprise Statutes, including N.C. Gen. Stat. § 292(b), a county's imposition of solid waste use fees "may not exceed the cost of operating the facility."

114. In violation of the Public Enterprise Statutes, and as described more fully above, the County is collecting Solid Waste Fees, including from Plaintiffs and Class Members, in amounts which exceed the cost of operating the Green Box Sites.

115. Plaintiffs and Class Members are entitled to the recovery of all Solid Waste Fees paid by them during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest.

THIRD CLAIM FOR RELIEF
(Violation of the Ordinance)

116. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

117. Pursuant to the County's Ordinance, including Ordinance § 14-56, the County may impose Green Box Fees only upon developed residential households which are not serviced by private or municipal waste collection services.

118. In violation of the County's Ordinance, the County charged Plaintiffs and Class Members with Green Box Fees even though Plaintiffs and Class Members had arranged for private or municipal waste collection services, and Plaintiffs and Class Members paid the said unlawful Green Box Fees.

119. Plaintiffs and Class Members are entitled to the recovery of all Green Box Fees paid by them during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest.

FOURTH CLAIM FOR RELIEF
(Carteret County's Adoption and Enforcement of the Challenged Solid Waste Fees Violate Plaintiffs' Rights to Equal Protection and Substantive Due Process under N.C. Const. Art. I, § 19 and All Unlawful Fees Should be Refunded)

120. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

121. Pursuant to N.C. Const. Art. VII, § 1, N.C. Gen. Stat. § 153A-4, and other applicable law, counties in North Carolina do not have authority to exercise powers contrary to State law or in excess of the authority conferred by the General Assembly.

122. By enacting and collecting the Solid Waste Fees, Carteret County acted under color of State law.

123. As described more fully above, Carteret County's collection of Solid Waste Fees from Plaintiffs and the Class Members was unlawful, *ultra vires*, and not authorized by law.

124. The imposition of unlawful Solid Waste Fees by Carteret County is arbitrary and capricious and constitutes an abuse of discretion.

125. The Solid Waste Fees charged to Plaintiffs and Class Members are excessive and lack a rational nexus to any legitimate government purpose.

126. By adopting and imposing the Solid Waste Fees, Carteret County has subjected Plaintiffs to disparate treatment under the laws without a rational basis in derogation of Plaintiffs' fundamental rights, and Carteret County acted outside the legitimate objective permitted for ordinances enacted by counties in North Carolina.

127. Accordingly, by requiring payment of the Solid Waste Fees to Plaintiffs and Class Members, Defendant effected a taking without just compensation in violation of Art. I, § 19 of the North Carolina Constitution.

128. By adopting and imposing unlawful Solid Waste Fees, Carteret County has violated Plaintiffs' and the Class Members' rights to equal protection and to substantive due process as provided by Article 1, § 19 of the North Carolina Constitution.

129. Plaintiffs and Class Members are entitled to the recovery of all Solid Waste Fees paid by them during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

130. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

131. As a result of Defendant's actions as set forth herein, Defendant was enriched and

received substantial benefits at the expense of Plaintiffs and Class Members.

132. Defendant consciously accepted the benefits conferred by Plaintiffs and Class Members, and the said benefits were not conferred officiously or gratuitously.

133. Defendant's acceptance and retention of these benefits conferred upon it as a result of Defendant's acts and practices make it inequitable for Defendant to retain the benefits without payment of the value to the Plaintiffs and the Class Members.

134. Defendant, by its deliberate conduct complained of herein, has been unjustly enriched in a manner that in good conscience warrants restitution.

135. As a proximate consequence of Defendant's improper conduct, Plaintiffs and the Class Members were injured.

136. Defendant has been unjustly enriched, and in equity, should not be allowed to retain this benefit.

137. Plaintiffs and Class Members are entitled to the recovery of all Solid Waste Fees paid by them during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest.

SIXTH CLAIM FOR RELIEF
(Money Had and Received)

138. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

139. By collecting Solid Waste Fees from Plaintiffs and Class Members, Defendant has received the payment of money in its hands which belongs to Plaintiffs and Class Members.

140. Equity and good conscience demand that Defendant return the unlawful Solid Waste Fees to Plaintiffs and Class Members.

141. If the Solid Waste Fees are not returned, Defendant will be unjustly enriched at

the expense of Plaintiffs and Class Members.

142. Plaintiffs and Class Members are entitled to the recovery of all Solid Waste Fees paid by them during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest.

SEVENTH CLAIM FOR RELIEF
(Injunctive Relief)

143. The preceding paragraphs are incorporated by reference as if fully set forth herein.

144. Plaintiffs and Class Members are entitled to injunctive relief permanently enjoining Defendant from collecting Solid Waste Fees from persons or entities, including Plaintiffs and Class Members, who receive municipal, contract or other non-Carteret County curbside trash service.

145. Plaintiffs and Class Members are entitled to injunctive relief permanently enjoining Defendant from collecting Solid Waste Fees from persons or entities, including Plaintiffs and Class Members, who do not use the Green Box Sites.

146. Plaintiffs and Class Members are entitled to injunctive relief permanently enjoining Defendant from imposing Solid Waste Fees in an amount which exceeds the cost of operating the Green Box Sites.

EIGHTH CLAIM FOR RELIEF
(Attorneys' Fees and Costs)

147. The preceding paragraphs are incorporated by reference as if fully set forth herein.

148. N.C. Gen. Stat. § 6-21.7 provides as follows:

In any action in which a city or county is a party, upon a finding by the court that the city or county violated a statute or case law setting forth unambiguous limits

on its authority, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action. In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160D-108(b) or G.S. 143-755, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions.

149. For the reasons set forth, the County has violated the provisions of N.C. Gen. Stat. § 153A-292(b) through charging and collecting the Solid Waste Fees.

150. The provisions of N.C. Gen. Stat. § 153A-292(b) are clear and unambiguous. *See Manning v. County of Halifax*, 2004 N.C. App. LEXIS 1662, at *7 (Sept. 7, 2004) (unpublished) (finding N.C. Gen. Stat. § 153A-292(b) to be "clear and unambiguous").

151. Plaintiffs and Class Members are entitled to the recovery of their attorneys' fees and costs pursuant to N.C. Gen. Stat. § 6-21.7 and/or other applicable law.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs George Robert Armistead, Jr., Madison Armistead, Greg Rhodes, and William Yates, on their own behalf and on behalf of Class Members, respectfully request:

1. That this Court declare Solid Waste Fees collected by Carteret County for the applicable statute of limitations period were unlawful and invalid;
2. That this Court certify the Classes and appoint Plaintiffs and their counsel to represent the Classes;
3. That this Court issue a declaratory judgment that Defendant's actions as set forth

herein violated Plaintiffs' and each Class Member's rights pursuant to N.C. Gen. Stat. § 1-253;

4. That Plaintiffs and Class Members recover from Defendant all Solid Waste Fees paid by the Plaintiffs and Class Members during the applicable statute of limitations period, which upon information and belief exceeds Twenty-Five Thousand Dollars (\$25,000);

5. That the Court tax the costs of this action, including reasonable attorney's fees, to Defendant;

6. That Plaintiffs and Class Members receive an award of interest at the statutory rate;

7. That Plaintiffs and Class Members have a trial by jury on all claims so triable; and

8. That Plaintiffs and Class Members have such other and further relief as the Court deems just and proper.

Respectfully submitted, this the ____ day of _____, 2021.

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CERTIFICATE OF SERVICE

I, Scott C. Harris, do hereby certify that on this date I supervised my office in serving the foregoing document upon the parties shown below, by electronic mail to their counsel or agent of record at the email addresses indicated below, in accordance with Rule 5 of the North Carolina Rules of Civil Procedure, as amended on October 1, 2020:

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This the ____ day of _____, 2021.

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