

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
Meredith Jacobs and Fred Lee,  
individually and on behalf of all  
others similarly situated,

Plaintiffs,

- against -

METROPOLITAN TRANSPORTATION AUTHORITY,  
ET AL., a/k/a MTA, MTA, NEW YORK CITY TRANSIT  
AUTHORITY, LONG ISLAND RAILROAD

Defendants  
-----X

Index No.:

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, by their attorneys THE DEREK SMITH LAW GROUP PLLC,  
complaining of defendants herein, respectfully allege upon information and belief as follows:

**NATURE OF THE ACTION**

1. Claimants make this claim for Defendant's repeated breach of contract of carriage.
2. This action is brought on behalf of all persons who paid Defendants for a monthly transportation train pass during the period from on or about May 1, 2017 until May 31, 2017 level.
3. As alleged more fully herein, Defendants have committed, *inter alia*, breach of contract of carriage, negligence and intentional infliction of emotional distress.

### **THE PARTIES**

4. Plaintiff, Meredith Jacobs, resides in the State of New York, County of Nassau, and rides the Defendant's transportation system on a regular basis.
5. Plaintiff, Frederick Lee, resides in the State of New York, County of Nassau and rides the Defendant's transportation system on a regular basis.
6. Defendants at all the times herein mentioned were and still are municipal corporations, divisions, and/or entities duly organized and existing under and by virtue of the laws of the State of New York.

### **CLASS ALLEGATIONS**

7. Plaintiffs bring this action pursuant to CPLR Section 901 on behalf of themselves and all other individuals who regularly ride the Long Island Railroad train system operated by the Defendants in the year 2017.
8. Excluded from the Class are all of the Defendants and its affiliates, successors, and assigns. This action is maintainable as a class action.
9. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of the Class members can be determined only by appropriate discovery, Plaintiffs believe that members of the Class number in the tens of thousands.
10. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs will fairly and adequately protect and represent the interests of the members of the Class and has retained competent counsel.
11. A class action is superior to other available methods for the fair and efficient

adjudication of this controversy.

12. Since the damages suffered by individual members of the Class may be relatively small, albeit significant, the expense and burden of individual litigation make it virtually impossible for the members of the Class to effectively seek redress individually for defendants' wrongful conduct.

13. Common questions of law and fact exist to all members of the Class and predominate over any questions solely affecting individual members of the Class. Such questions of law and fact common to the Class include:

- a. Whether Defendants breached their implied duty of carriage to passengers riding the Long Island Railroad.
- b. Whether Defendants breached their duty to provide passengers with comfort and safety in their travels. *Javeline v. Long Island Railroad*, 106 Misc.2d 814 (1981); *Kessel v. Long Island R.R. Co.*, 107 Misc.2d 1067, 436 N.Y.S.2d 684.
- c. Whether Defendants breached their duty to deliver passengers to their destinations without unreasonable delay or detention. *Becker v. Conrail*, Westchester L. J., March 7, 1983
- d. Whether Defendants failed to provide the services it is capable of providing with their purchased equipment
- e. Whether Defendants failed to adequately keep their equipment in working order.
- f. Whether Defendants failed to secure the necessary changes, modifications or spare parts to properly operate their equipment.

- g. Defendants made material misrepresentations to the public regarding their failure to provide adequate service.
  - h. Whether Defendants breached contracts, express and/or implied with patrons of the bus/subway/railroad system.
  - i.
14. As a result of Defendants' aforesaid acts, Plaintiffs and other members of the Class have suffered damages in an amount to be determined at trial.

### **PRELIMINARY STATEMENT**

A funny thing happened on the way to the station. As hundreds of commuters made their way from outside of Penn Station and the surrounding areas towards the hall where the LIRR carries thousands back to Long Island, an announcement could be heard over the speakers: "Due to switch problems, expect delays and cancellations." As the voice echoed through the halls of Penn Station, hundreds of commuters found themselves stranded, without a way home, and at the mercy of the MTA LIRR. The above facts, however, were nothing new to LIRR passengers who recognized the above announcement as a pattern and practice of the LIRR. On almost a daily basis, during rush hours, hundreds of passengers (most of whom purchase monthly passes) find themselves stranded, being forced onto overly crowded trains and facing hazardous conditions in an effort to leave and enter Penn Station. While the MTA LIRR cries foul and passes blame onto Amtrak, the MTA LIRR has done absolutely nothing to improve railroad and safety conditions for passengers to whom they owe a duty of reasonable care. Dozens of incidents have made the conduct of the MTA LIRR extreme and outrageous and the monthly ticket holders of the MTA LIRR have filed this suit to address the extreme and outrageous behavior which should not be tolerated in a civilized society.

### FACTS

15. The Long Island Railroad (LIRR), which is owned by the Metropolitan Transportation Authority (MTA), is both the largest, busiest, and oldest common carrier commuter rail system in America. The LIRR's approximately 700 miles of track provide service to over 300,000 daily weekday riders.
16. A large percentage of daily weekday riders are employed in New York City and depend on the LIRR to travel between Long Island and Penn Station. The LIRR's monthly ticket prices currently range from \$190 - \$500 based on the travel distance. The LIRR made a decision to raise ticket prices and continue to pay exorbitant salaries to MTA officials.
17. In New York, common carriers owe a duty to provide reasonable "comfort and safety" in "delivering passengers to their destinations without unreasonable delay or detention." (*Javeline v. Long Island Railroad; Becker v. Conrail, Westchester*)
18. In a 1981 action for breach of contract, the court in *Dominianni v. Consolidated Rail Corporation* held that *New York's Transportation Law section 96* provides the standards of service to which a passenger is entitled. The *Dominianni* court held that unreasonable filth, noxious odors, inadequate heating and excessive crowding violate this standard of service and constitute a breach of the carriage contract.
19. Recent events have illustrated in painstaking detail, the Defendant's utter failure to provide passengers with any semblance of comfort or safety,
20. According to multiple news outlets, cancellations and delays on the Long Island Rail Road during the evening rush have reached their highest level in 10 years.
21. For example, on or about May 10, 2017, after two days of widespread delays and cancellations, LIRR commuters were subjected to catastrophic service disruptions as nearly

80 trains were canceled at the peak of Wednesday evening's rush hour. The cancellations not only disrupted passengers' travel plans, they also became the catalyst for dangerous overcrowding at Penn Station, on the train platforms, and onboard the few trains still running.

22. On or about May 11, 2017, New York Congressman Tom Suozzi issued a statement regarding the ongoing LIRR service disruptions and delays, stating that "The LIRR delays, and service disruptions have gotten out of control," adding that "they have done a poor job communicating a plan to address this very real problem which has been decades in the making." Governor Andrew Cuomo advised LIRR passengers to be ready for the "summer of hell."
23. On or about May 18, 2017, the LIRR advised customers to "anticipate cancellations on all branches during this evening's rush," because of a signal problem near New Hyde Park.
24. On or about May 24, 2017, New York Senator Elaine Phillips declared that "Poor maintenance and crumbling infrastructure at Penn Station are causing massive delays, cancellations and service disruptions that make commuting a living hell for Long Islanders."
25. On or about May 30, 2017, passengers were stuck underground for more than three hours Tuesday morning when two Long Island Rail Road trains stalled inside an East River tunnel.
26. On or about June 6, 2017, LIRR customers traveling to Hempstead, Long Beach, Far Rockaway and West Hempstead were told to avoid Penn Station and instead advised to take the 2 or 3 subway lines downtown to Atlantic Terminal in Brooklyn, and then take the LIRR from there.
27. As a result of the LIRR's numerous train cancellations and delays, all subsequent

trains see drastic increases in passengers and become exponentially more dangerous and unsanitary for those on board.

28. On a regular and ongoing basis, the LIRR's delays and cancellations have resulted in Plaintiffs being forced onto train platforms that are overcrowded to the point that Plaintiffs have been relegated to waiting for the train while standing on the very edge of the platform, mere inches away from incoming trains. (See photo)



29. Numerous patrons of the LIRR have complained that they have almost fallen onto the train tracks on account of unregulated overcrowding on LIRR platforms.
30. On a regular and ongoing basis, the LIRR's delays and cancellations have resulted in Plaintiffs being forced onto trains with passenger occupancies that are well beyond the maximum capacity intended for such trains. To date, the LIRR has taken no action to address overcrowding on LIRR trains which has risen to dangerous and egregious levels particularly during peak travel hours.

31. On a regular and ongoing basis, Plaintiffs have regularly been left without proper seating or other means of riding LIRR trains safely and securely.
32. For example, on a regular basis, Plaintiffs have been relegated to riding the LIRR train while standing shoulder-to-shoulder amongst dozens of other riders packed into the middle of the train car's vestibule. These riders are multiple feet away from any handrails or other immovable fixture to brace themselves while the train changes speeds or turns course, resulting in passengers being thrown about the train's interior.
33. On multiple occasions, Plaintiffs have boarded overcrowded trains with so many passengers that Plaintiffs have been relegated to standing, along with multiple other begrudged riders, in the train car's unsanitary and untreated bathrooms. The floors of these bathroom areas are consistently covered in visible layers of urine and the toilets are regularly overflowing with human waste. (See photo)





34. On a regular basis, the overcrowded LIRR train cars have prevented Plaintiffs from being able to freely access the train car bathrooms for their intended use.
35. On a regular basis, Plaintiffs have not been able to get off of the LIRR trains at their chosen destinations due to the overcrowded aisles and vestibule areas which completely block passengers from moving freely within the train cars and prevent passengers from exiting the train car.



36. On a regular basis, due to multiple delays and cancellations, monthly passenger riders and all others similarly situated have suffered discipline at work, loss of job interviews, loss of enjoyment of life, emotional distress, physical distress, and have had current physical ailments exasperated and aggravated by conditions at the LIRR.

**AS A FIRST CAUSE OF ACTION**  
**BREACH OF CONTRACT OF CARRIAGE**

37. Plaintiffs repeat and reallege each and every allegation made in the complaint as if they were set forth herein fully at length.
38. A contract of carriage imposes a multitude of duties on a carrier in addition to the straight-forward transporting of a passenger to their desired destination. Such carriers must be required to exercise a high degree of care throughout all aspects of their operation. *Pennsylvania Railroad Co. v. Puritan Coal Mining Co.* Defendant's conduct was so outrageous in character and extreme in degree as to go beyond all possible bounds of decency.
39. The LIRR has unquestionably breached the duty of care owed to passengers by forcing them to ride trains in dangerous and unsanitary conditions.

**AS A SECOND CAUSE OF ACTION**  
**NEGLIGENCE**

40. Plaintiffs repeat and reallege each and every allegation made in the complaint as if they were set forth herein fully at length.
41. Defendant owed a duty of reasonable care to Plaintiffs and others similarly situated as commuters, to inspect their equipment and take necessary steps to ensure reasonably safe passage.
42. Defendants have failed to provide the minimum required standards set forth in the *Kessel*



case, which listed the obligations of a common carrier commuter railroad: (1) to provide the services it is capable of providing with the equipment it has purchased; (2) to keep such equipment in working order; and (3) to secure the necessary changes, modifications or spare parts for its equipment.

43. Similarly, the *Javeline* court held that a common carrier must use vigilance to ensure that its equipment remains in excellent condition and free from defects. Under *New York Transportation Law section 111*, the liability is the same for failure to perform a specific duty as it is for performance of a forbidden act.

44. Defendant breached the duty of care by failing to take any measure to protect Plaintiffs and other similarly situated passengers from the unsafe and unsanitary conditions of the LIRR trains.

### **AS A THIRD CAUSE OF ACTION FOR**

### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

45. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs of the Complaint as set forth at length herein.

46. Under New York law, Intentional Infliction of Emotional Distress requires: “(1) extreme and outrageous conduct, (2) intent to cause severe emotional distress, (3) a causal connection between the conduct and the injury and (4) severe emotional distress.” *Bender v. City of New York*, 78 F.3d 787, 790 (2d Cir. 1997). “[L]iability has been found only where the conduct has been so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Howell v. New York Post Co.*, 81 N.Y.2d 115, 122, 596 N.Y.S.2d 350, 612 N.E.2d 699 (N.Y. 1993).

47. Defendants unsafe, willful, wanton, and egregious treatment made upon the Plaintiffs, has been so outrageous and extreme in degree so as to go beyond all possible bounds of decency in a civilized society.

48. Defendants are liable to the Plaintiffs for Intentional Infliction of Emotional Distress in which the Plaintiffs claim damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs, on their own behalf, and on behalf of the Class, pray for judgment against the Defendants and for an Order as follows:

- a. Declaring this action to be a proper class action and certifying Plaintiffs as Class Representatives;
- b. Granting Plaintiffs and the Class a trial by jury;
- c. Awarding Plaintiffs and all members of Class the compensatory and other legal damages in an amount to be proven at trial, together with interest thereon.
- d. Awarding Plaintiffs and all members of Class reimbursement for all additional amounts paid pursuant to the herein mentioned fare hike including interest thereon.
- e. Awarding Plaintiffs and the members of the Class their costs and expenses incurred in this action, including reasonable Attorneys' Fees; and
- f. Awarding such other and further relief as Plaintiffs and the class are entitled.

**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury of all issues so trial.

Date: June 10, 2017

\_\_\_\_\_/s/ Paul Liggieri\_\_\_\_\_  
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