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185 F.4th 316

United States Court of Appeals, Second Circuit.

The RETAIL PROPERTY TRUST, Plaintiff-Appellant,
v.
NASSAU COUNTY DEPARTMENT OF ASSESSMENT, James E. Davis, as Acting County Assessor, The Nassau County Legislature, The County of Nassau, Defendants-Appellees.

No. 25-907

August Term 2025

Argued: March 19, 2026

Decided: August 6, 2026

Before: Wesley, Sullivan, and Menashi, Circuit Judges.

Opinion

Judge Wesley concurs in a separate opinion.
Richard J. Sullivan, Circuit Judge:

***320** The Retail Property Trust (the "Trust") appeals from the district court's (i) grant of summary judgment in favor of defendants Nassau County (the "County") and its acting assessor, department of assessment, and legislature (collectively, "Defendants") and (ii) denial of the Trust's motion for

sanctions. In a nutshell, the Trust challenges the County's ability to impose millions of dollars of fines for failure to comply with the County's Annual Statement of Income and Expense ("ASIE") Law, Nassau County Administrative Code § 6-30.0.

The ASIE Law requires commercial property owners either to share financial information with county assessors, so that they can accurately determine property values, or to pay a financial penalty, calculated as a percentage of the market value of the property. After the Trust – which owns the Roosevelt Field Shopping Mall in Garden City – failed to report its financial data as required by the ASIE Law for two consecutive years, the County fined it approximately $4.8 million. In response, the ***321** Trust sued Defendants, alleging that the ASIE Law violates the Eighth Amendment's Excessive Fines Clause, the Fourteenth Amendment's Due Process Clause, and several state laws. It subsequently moved for sanctions.

The district court rejected the Trust's constitutional arguments, holding that the penalty at issue was not excessive, that the Trust received adequate procedural due process, and that the ASIE Law did not violate the Trust's substantive-due-process rights. It then denied the sanctions motion on the ground that the Trust had simply identified immaterial factual disputes – not egregious dishonesty or bad faith. Because we agree with the district court across the board, we affirm the judgment in full.

I. BACKGROUND

The amount of tax that property owners pay generally depends on the value of their property. In Nassau, county-level officials determine that value by assessing properties. Most of the property taxes collected go to other municipalities and taxing jurisdictions within the County. But if the County overvalues a property, resulting in the overpayment of taxes by the property owner to those various jurisdictions, the County alone is on the hook to refund the owner. Such "tax certiorari refunds became a significant liability [for] the County, costing approximately one hundred million dollars a year." Sp. App'x at 87.

To make assessments as accurate as possible – and thus ease its tax-refund burden – the County has long mandated that commercial property owners report ASIE information. In the mid-1980s, the County gave this ASIE-reporting requirement teeth: property owners who failed to provide their financial data upon request were fined $500. But while enhanced enforcement and the imposition of fines increased compliance with the reporting requirement, around 20% of property owners still refused to provide data.

In late 2013, the County updated the penalty structure of the ASIE Law, replacing the $500 flat fee with "monetary penalties ranging from 0.25% ... to 0.75% of the fair market value of the property," depending on how long the property owner took to comply. *Id.* at 89 (internal quotation marks omitted).

The new ASIE Law thus aims to "improve compliance" and "minimize assessment errors" that "lead[ ] to refund liability." *Id.* at 88–89.

Roosevelt Field is "the second-largest retail shopping mall in the State of New York[,] with over 2 million square feet of gross leasable space." J. App'x at 2619. The Trust received notice from the County of the new ASIE law. Nevertheless, it did not submit the required ASIE statements for 2013 and 2014. As a result, in 2016, the County informed the Trust that it was imposing $4,753,209 in civil penalties because of its failure to file ASIE statements for Roosevelt Field. *Id.* at 2629–30.

The Trust denies that it received any preliminary letters providing it with notice of the potential fine or an opportunity to cure or be heard as to its ASIE delinquency, as required by the ASIE Law and County regulations. *See* Nassau County Administrative Code § 6-30.0(f); Nassau County Department of Assessment's Rules for Income and Expense Statements § 4.0(a)(i), (ii). But once it *did* receive notice of the fine, the Trust did not pursue any remedies under the ASIE Law or challenge the fine by filing a petition in state court under Article 78 of New York's Civil Practice Law and Rules, N.Y. C.P.L.R. § 7803 ("Article 78"). Instead, the Trust filed this action in federal court, alleging that Defendants had violated the U.S. Constitution's prohibition on excessive fines as well as its guarantees of procedural and substantive due process. ***322** The Trust also asserted claims under the New York State Constitution and

Article 78.

After the close of discovery, both sides moved for summary judgment. The Trust also moved for sanctions, arguing that witnesses for Defendants had misleadingly described both the usefulness of the ASIE data and the County's data-security protocols. The district court referred all of these motions to Magistrate Judge Anne Y. Shields, who recommended that the district court grant Defendants' motion for summary judgment and deny the Trust's motion for sanctions.

The district court agreed, concluding that (i) the fine was proportional to the Trust's offense; (ii) the Trust had received sufficient process because the availability of an "Article 78 proceeding [wa]s adequate to protect" its rights, J. App'x at 66 (internal quotation marks omitted); (iii) the ASIE Law did not violate the Trust's substantive-due-process rights because "[i]mproving the accuracy of assessments [wa]s conceivably a rational basis for th[at] legislative action," *id.* at 70; and (iv) Magistrate Judge Shields had "acted well within her discretion" in denying the Trust's sanctions motion, *id.* at 76. Finally, having knocked out all of the Trust's federal claims, the district court "decline[d] to exercise supplemental jurisdiction" over the state-law claims, which it dismissed without prejudice. J. App'x at 81; *see* 28 U.S.C. § 1367. The Trust timely appealed.

II. DISCUSSION

[1] [2]"We review *de novo* a district court's decision to grant summary judgment," affirming only if, "construing the evidence in the light most favorable to the [non-moving] party ... and drawing all reasonable inferences in that party's favor," we conclude that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Covington Specialty Ins. Co. v. Indian Lookout Country Club, Inc.*, 62 F.4th 748, 752 (2d Cir. 2023) (internal quotation marks omitted).[1] Meanwhile, "[w]e review the district court's denial of sanctions for abuse of discretion." *Kim v. Kimm*, 884 F.3d 98, 106 (2d Cir. 2018).

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[1] The parties dispute whether the district court should have reviewed the magistrate judge's underlying report and recommendation *de novo*, instead of merely for clear error. We have recently explained that "[w]here a litigant's objections take issue with a specific legal conclusion in the report and recommendation, they should be considered *de novo*, even if they repeat an argument raised before the magistrate judge." *Nambiar v. Cent. Orthopedic Grp., LLP*, 158 F.4th 349, 361 (2d Cir. 2025) (internal quotation marks omitted). Regardless, for the reasons explained here, based on our own *de novo* review, we agree that Defendants were entitled to summary judgment. And because we review the district court's decision *de novo*, any error by the district court as to the correct standard of review does not affect the disposition of this appeal. *See Miller v. Brightstar Asia, Ltd.*, 43 F.4th 112, 121 (2d Cir. 2022).

A. The Trust's Eighth Amendment Challenge Fails.

The Trust first contends that the ASIE penalty violated the Eighth Amendment's Excessive Fines Clause. We disagree.

The Eighth Amendment prohibits "excessive fines." *United States v. Viloski*, 814 F.3d 104, 108 n.3 (2d Cir. 2016) (quoting U.S. Const. amend. VIII); *see Timbs v. Indiana*, 586 U.S. 146, 150, 139 S.Ct. 682, 203 L.Ed.2d 11 (2019) (incorporating the Eighth Amendment against the states). Because the parties here "do not dispute" that the ASIE penalty qualifies as a fine, Defs.' Br. at 29, the fate of the Trust's claim depends entirely on whether (i) the Eighth Amendment protects corporate entities ***323** in the first place; and (ii) the fine here was "excessive." *Viloski*, 814 F.3d at 110 (citing *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998)).

1. The Eighth Amendment protects corporations.

[3] [4]While "not all constitutional protections apply to corporations," such entities "may [still] assert" a "wide variety of constitutional rights." *Consol. Edison Co. of N.Y. v. Pataki*, 292 F.3d 338, 346–48 (2d Cir. 2002). To distinguish between those "rights that may be asserted by corporations and those that may not," *id.* at 347, we must first determine whether the right at issue is a "purely personal guarantee" that has been historically "limited to the protection of individuals" or one that extends more broadly. *First Nat'l Bank of*

Boston v. Bellotti, 435 U.S. 765, 778–79 n.14, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978) (internal quotation marks omitted). To answer that question, we consider the "nature, history, and purpose" of the asserted right. *Consol. Ed.*, 292 F.3d at 347.

Applying those factors here, we have little hesitation in concluding that the Eighth Amendment shields corporations as well as individuals from excessive fines. Indeed, we implied as much in *Consolidated Edison*, where we considered whether Article I's Bill of Attainder Clause protects corporations. *See id.* In determining that it does, we compared that clause – which prohibits "law[s] that legislatively determine[ ] guilt and inflict[ ] punishment upon ... identifiable individual[s]," *id.* (quoting *Nixon v. Adm'r of Gen. Servs.,* 433 U.S. 425, 468, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977)) – to both the Excessive Fines Clause and the Fifth Amendment's Takings Clause. *Id.* at 348–49. We further explained that all of these constitutional provisions protect corporations because they aim to prohibit "punitive confiscation of private property," which is a "type[ ] of punishment" that "may injure a corporation in the same way it injures an individual." *Id.*

In reaching that conclusion, we endorsed Justice O'Connor's concurrence in *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.,* which "argu[ed] that ... [the] Excessive Fines Clause applies to corporations." *Id.* (citing 492 U.S. 257, 284–85, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) (O'Connor, J., concurring in part and dissenting in part)). In

particular, Justice O'Connor explained that "[t]he payment of monetary penalties, unlike the ability to remain silent, is something that a corporation can do as an entity." *Browning-Ferris*, 492 U.S. at 285, 109 S.Ct. 2909. She further noted that the Supreme Court has historically "reviewed fines and monetary penalties imposed on corporations" and then concluded that "[i]f a corporation is protected by the Due Process Clause from [inordinate penalties], it is also protected from such penalties by the Excessive Fines Clause." *Id.* By adopting this reasoning, *Consolidated Edison* strongly suggested that the Excessive Fines Clause protects corporations. And in more recent cases, we have simply assumed as much. *See, e.g.*, *New York v. United Parcel Serv., Inc.*, 942 F.3d 554, 599 n.36 (2d Cir. 2019) (noting constitutional "constrain[ts]" of Excessive Fines Clause in case involving corporate defendant).

[5] [6] [7]Defendants ignore this precedent, pointing instead to loose generalities about the clause's historical purposes, which "include protecting a person's livelihood and protecting against political reprisals." Defs.' Br. at 27. But those purposes come into play just as much for corporations – which may face political persecution and which help guarantee the livelihoods of their employees and investors. As ***324** we explained in *Consolidated Edison*, the Constitution's "protection[s] against targeted economic injury" are "fully applicable to corporations" because "if [such] protections did not extend to corporations," they "would be significantly undermined for individuals." 292 F.3d at 348. After

all, "[w]hen a corporation suffers an economic injury, its shareholders suffer the same economic injury." *Id.* We therefore hold that the Excessive Fines Clause shields both individuals and corporations from "overbearing and oppressive monetary sanctions." *Browning-Ferris*, 492 U.S. at 285, 109 S.Ct. 2909.[2]

In his concurrence, Judge Wesley insists that because "we need not decide th[e Eighth Amendment] issue to resolve this appeal," we should "leave that question for another day." Concurrence at 331. But we *do* need to consider this issue in some capacity, either by directly resolving it or assuming without deciding it. *See id.* at 331-32 & n.1 (acknowledging that other courts have confronted the Eighth Amendment question by "assum[ing] without deciding" its answer, not by simply ignoring it). We therefore resolve this issue today and, in doing so, provide a final answer for the benefit of uncertain district courts.

The concurrence offers several reasons why we should duck this issue, but none of them is persuasive. *First*, the concurrence emphasizes that the magistrate judge below did not answer the Eighth Amendment question because of "the dearth of guidance on th[at]" issue. *Id.* at 332. The concurrence then urges us to do the same. But a magistrate judge's decision does not tie our hands, and the concurrence's overly deferential

[2] Other courts agree. *See Colo. Dep't of Labor & Emp. v. Dami Hosp., LLC*, 2019 CO 47M, ¶¶ 21–26, 442 P.3d 94 (2019) (en banc); *Duling Enters., LLC v. Dep't of Lab. & Indus.*, 35 Wash. App. 2d 192, 200, 573 P.3d 936 (2025).

approach would establish a vicious cycle in which (i) we refuse to provide guidance because a lower court has declined to reach an issue; (ii) a future lower court sidesteps an identical issue precisely because of this "dearth of guidance"; and (iii) we then again refuse to reach the issue on appeal. Our job is to establish the precedent that the magistrate judge lacked here, not to dodge important legal questions at all costs. After all, "[t]here is a difference between judicial restraint and judicial abdication," *Citizens United v. FEC*, 558 U.S. 310, 375, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (Roberts, *C.J.*, concurring), and it would be abdication rather than restraint to sidestep a recurring question that is squarely presented in this appeal. Indeed, as we have previously explained, we must "avoid restraint becoming lethargy and efficiency mere avoidance." *Browning-Ferris Indus. of S. Jersey, Inc. v. Muszynski*, 899 F.2d 151, 159 (2d Cir. 1990); *see also In re Petrobras Sec.*, 862 F.3d 250, 257 (2d Cir. 2017) ("taking ... opportunity to clarify the scope of" doctrine implicated by "threshold" issue).

Second, the concurrence contends that "the Trust is not a corporation but a Massachusetts business trust." Concurrence at 332. That is, however, a distinction without a difference. *See id.* at 332 n.3 (conceding that "[t]here may not be any reason to distinguish the Excessive Fines Clause's applicability to corporations from its applicability to Massachusetts business trusts"). The reasoning underlying our holding applies equally to all business organizations for which "overbearing and oppressive monetary sanctions" would harm shareholders, beneficiaries, or similar

parties in interest. *Browning-Ferris*, 492 U.S. at 285, 109 S.Ct. 2909; *see also In re McDonald*, 205 F.3d 606, 612 (3d Cir. 2000) ("A court can choose among different holdings that ***325** offer broader or narrower ways of resolving a dispute.").

Third, the concurrence suggests, in passing, that this issue was "scarcely briefed." Concurrence at 332. But the record reflects that the parties actually briefed this question at every stage of this litigation. *See* Defs.' Br. at 17, 25–28; Reply Br. at 7–8; J. App'x at 2173–74; *id.* at 2201–03; *id.* at 2787–88 n.6. When litigants plainly contest a legal proposition, what matters is the quality of their arguments – not the raw number of lines they use to make them.

Fourth, the concurrence relies on the majority opinion in *Browning-Ferris* to reassert that (i) "we need not answer" the question of whether the Excessive Fines Clause protects business entities because (ii) the fine here was not excessive. Concurrence at 332-33 (quoting *Browning-Ferris*, 492 U.S. at 276 n.22, 109 S.Ct. 2909 (majority opinion)). But *Browning-Ferris* does not suggest that we must first analyze whether a given fine is excessive before considering whether the Eighth Amendment applies at all. On the contrary, the Supreme Court in *Browning-Ferris* did *not* address whether the fine at issue was excessive and instead held that the Excessive Fines Clause "does not constrain an award of money damages in a civil suit" between private parties. 492 U.S. at 264, 109 S.Ct. 2909.

In other words, the majority in *Browning-Ferris* resolved *one* initial issue about the Eighth Amendment's scope, without needing to answer *other* threshold "questions that *otherwise might be necessarily antecedent*" parts of the analysis. *Id.* at 276, 109 S.Ct. 2909 n.22 (emphasis added). For her part, Justice O'Connor determined that the Eighth Amendment *did* apply to civil punitive damages, and she therefore proceeded to the next "preliminary question[ ]" – *i.e.*, whether "corporation[s] ... [are] protected by the Excessive Fines Clause." *Id.* at 283, 109 S.Ct. 2909 (O'Connor, *J.*, concurring in part and dissenting in part). *Browning-Ferris* thus cuts directly against the concurrence's theory: both the majority and the concurrence there focused on *threshold* issues related to the Eighth Amendment's breadth, rather than jumping directly to the question of whether the fine at issue was excessive.

Finally, the concurrence argues that we must avoid resolving this "not ... uncomplicated" "constitutional question[ ]." Concurrence at 331-32 n.1, 332-33 (internal quotation marks omitted). But it does not say what exactly is "complicated" about the issue here, which our caselaw appears to answer clearly. Nor does the concurrence explain why the "constitutional" dimension of this case is relevant; in arguing that we must avoid even directly presented constitutional questions, the concurrence relies on precedent where the Supreme Court considered resolving "statutory claims" before reaching overlapping constitutional ones. *See id.* at 332-33 (citing *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 446, 108 S.Ct.

1319, 99 L.Ed.2d 534 (1988)). This case, by contrast, tees up purely constitutional issues, including how far the Eighth Amendment stretches.[3]

***326** [8]We make one additional point: the concurrence appears to focus on prudential concerns related to "judicial restraint." *Id.* (internal quotation marks omitted). But we do not think prudence requires us to depart from the logical approach of addressing threshold questions before merits ones so as to "decide the cases before us." *Id.* (citing *United States v. Rubin*, 609 F.2d 51, 69 n.2 (2d Cir. 1979) (Friendly, *J.*, concurring)). Courts are often faced with "successive questions," and how to sequence that analysis "is within the broad discretion judges have in constructing written opinions." *Spears v. Stewart*, 283 F.3d 992, 1005 (9th Cir. 2002) (Kozinski, *J.*, concurring in the denial of rehearing en banc).[4] Nor

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[3] The concurrence also points to *Camreta v. Greene*, where the Supreme Court advised us against "turning small cases into large ones." Concurrence at 332 (quoting 563 U.S. 692, 707, 131 S.Ct. 2020, 179 L.Ed.2d 1118 (2011)). But *Camreta*'s main holding cuts in the *opposite* direction; indeed, in the very next sentence, the Supreme Court explained that it "is sometimes beneficial to clarify ... legal standards" by reaching non-dispositive issues. 563 U.S. at 707, 131 S.Ct. 2020 (noting that courts may "avoid avoidance"). Put simply, the avoidance of legal questions is not – as the concurrence implies – a virtue in its own right.

[4] *See also* John O. McGinnis & Michael Rappaport, *An Originalist Approach to Prospective Overruling*, 99 Notre Dame L. Rev. 425, 465–66 (2023) (explaining that "a judicial conclusion that is part of a logical order for deciding an issue is not dictum but holding" because "the conclusions that the court reaches are

does addressing questions in their logical order make one answer dicta and the other holding. As the Supreme Court explained long ago, if a "point [is] properly presented and decided in the regular course of the consideration of the cause," the decision on that point "[is] in no just sense dictum," even if "something else [is] found in the end [that] dispose[s] of the whole matter." *Fla. Cent. R. Co. v. Schutte*, 103 U.S. 118, 143, 26 L.Ed. 327 (1880).

That rule makes sense. Holdings decide a case and "explain[ ] ... the rules [of law] that govern th[at] decision." Pierre N. Leval, *Judging Under the Constitution: Dicta About Dicta*, 81 N.Y.U. L. Rev. 1249, 1256–57 (2006). By contrast, "a dictum consists essentially of a comment on how the court would decide some other, different case." *Id.* at 1256. Under this straightforward definition, the answer to a squarely presented "preliminary question[ ]" about whether a business entity is "protected by the Excessive Fines Clause" clearly qualifies as a holding – not dictum. *Browning-Ferris*, 492 U.S. at 283, 109 S.Ct. 2909. Far from speculating about "some other, different case," our holding resolves a threshold issue and provides a key link in our chain of analysis. Leval,

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part of an order of decision that is a logical method for deciding the case" and it is therefore "sensible to treat these conclusions as reasonable methods to actually decide the case rather than to decide matters that are not needed for the decision"); Michael C. Dorf, *Dicta and Article III*, 142 U. Pa. L. Rev. 1997, 2046 (1994) ("[S]urely a court should not be faulted for addressing issues in the order that they logically present themselves.").

supra, at 1256. And "[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound"; that is because "the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) (internal quotation marks omitted); *see also United States v. Johnson*, 143 F.4th 184, 191 (2d Cir. 2025) (Menashi, *J.*, concurring in the denial of rehearing en banc) ("The reasoning of a panel opinion binds a later panel even if the later panel can imagine a narrower rationale for the earlier decision.").

In other words, when we address a threshold issue, we do not create dicta just because we theoretically *could* have assumed the answer to that question without deciding it. Today, we must determine whether the County can impose a $4.8 million fine. To resolve that dispute, we proceed in logical order: first, we decide that the Excessive Fines clause applies to business entities; second, we decide whether the fine was excessive as applied to this ***327** entity. Both of these questions were "properly presented" in the litigation and have now been "decided in the regular course of the consideration of the case." *Fla. Cent. R. Co.*, 103 U.S. at 143. Our decisions on those questions are therefore "in no just sense dictum." *Id.*

[9]For all these reasons, and to provide needed guidance to district courts and future litigants, we today hold that the Eighth Amendment shields

business entities – including trusts and corporations – from excessive fines.

2. The fine here was not excessive.

[10] [11]A fine is unconstitutionally "excessive" if it is "grossly disproportional to the gravity of [the] offense." *Viloski*, 814 F.3d at 110 (quoting *Bajakajian*, 524 U.S. at 334, 118 S.Ct. 2028). To determine whether a fine is disproportional, we weigh the four "*Bajakajian* factors": "(1) the essence of the [offense] of the defendant and its relation to other [unlawful] activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum ... fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct."[5] *Id.* (internal quotation marks omitted); *see also Bajakajian*, 524 U.S. at 336, 118 S.Ct. 2028 ("[We] grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." (quoting *Solem v. Helm*, 463 U.S. 277, 290, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983))). The Trust's claim fails that test.

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[5] Although *Bajakajian* involved a criminal forfeiture, 524 U.S. at 328, 118 S.Ct. 2028, we have previously applied the *Bajakajian* factors in civil cases, *Reese v. Triborough Bridge & Tunnel Auth.*, 91 F.4th 582, 589 n.3 (2d Cir. 2024); *see also Oles v. City of New York*, 2023 WL 3263620, at *1 (2d Cir. May 5, 2023) (summary order) (analyzing constitutionality of parking fines), and neither side disputes that *Bajakajian* applies here.

[12]*First*, the "essence" of the Trust's conduct justified a significant penalty. Although this fine arises in the context of a civil penalty rather than a criminal prosecution, it still relates to misconduct that implicates the ability of county and municipal governments to assess and collect revenue. The Trust "knowingly and willfully," *United States v. Castello*, 611 F.3d 116, 121 (2d Cir. 2010), flouted the ASIE Law over the course of years – not because of "a spur of the moment decision" or a "momentary lapse of judgment," but as part of a "conscious ... decision" to avoid compliance, *von Hofe v. United States*, 492 F.3d 175, 188 (2d Cir. 2007).

The Trust attempts to downplay its "level of culpability" by insisting that its failure to submit ASIE data was merely a "reporting offense" that did not involve other "illegal activities of any kind." Trust Br. at 28 (quoting *Bajakajian*, 524 U.S. at 337, 118 S.Ct. 2028). But unlike in *Bajakajian*, where the statute at issue required reporting to track other criminal activity – which the defendant was not engaged in, 524 U.S. at 337–38 & n.13, 118 S.Ct. 2028 – the reporting requirement here aimed expressly at compelling all commercial property owners to turn over certain data. The Trust's disregard of the statute's purported goal of protecting the public fisc by helping the County develop "more accurate assessments," Sp. App'x at 51, thus makes its offense serious enough to merit a fine. Indeed, we have upheld penalties imposed for reporting offenses, even when the violator was "convicted of no other crime." *Castello*, 611 F.3d at 124 (ordering forfeiture of

roughly $12 million); *see also United States v. George*, 779 F.3d 113, 122–24 (2d Cir. 2015) (affirming forfeiture of home based on defendant's harboring ***328** conviction, which the court characterized as "a deliberate and sustained thwarting of federal immigration law, which allowed her to exploit [immigrant] labor while ignoring federal wage and tax laws").

[13]*Second*, the Trust fits "into the class of persons for whom the statute was principally designed." *Viloski*, 814 F.3d at 110 (internal quotation marks omitted). The ASIE Law aimed to "enhance compliance from" such "income[-]producing properties" as the Roosevelt Field Mall. Sp. App'x at 52 (quoting fiscal impact statement issued by Nassau County Legislature's Office of Legislative Budget Review). And while the Trust insists that – in hindsight – the particular ASIE data requested "could never be used to value large shopping malls," Trust Br. at 30, such retrospective attacks on the overall utility of a statute have no bearing on whether that statute targeted the entity being fined when it was enacted. The Trust cannot dispute that, regardless of the ultimate usefulness of the ASIE data, the ASIE Law squarely aimed at commercial properties, including Roosevelt Field Mall.

[14]*Third*, the fine was not grossly disproportional when compared to "the maximum ... fine that could have been imposed." *Viloski*, 814 F.3d at 110 (internal quotation marks omitted). The Trust points out that an earlier version of the ASIE Law – enacted in 1984

– imposed a "mere $500 penalty," a far cry from the $4.8 million fine at issue here. Trust Br. at 32. But the third *Bajakajian* factor requires us to consider the maximum penalty available under the *current* statutory framework – not under a 1980s-era relic preferred by the entity being fined but rejected by the legislature itself. And the current ASIE Law keys fines to the fair market value of the underlying property and to the delinquency of the owner, scaling penalties from 0.25% up to 0.75% of the property's value depending on how long the owner takes to comply. Thus, by design**,** the fine here matched the value of the property, the corresponding importance of correctly assessing it, and the Trust's multiyear recalcitrance.

Furthermore, the fact that the penalty here was pegged to a percentage of the value of the property at issue does not itself violate the Excessive Fines Clause. *See Ford Motor Credit Co. v. N.Y.C Police Dep't*, 503 F.3d 186, 190 n.7 (2d Cir. 2007) (upholding fine of 10% of value of seized and auctioned cars and explaining that "[w]hile there is cause for some concern over the poor correlation between the administrative costs the City likely incurs and the flat, ten-percent fee it charges secured creditors, we agree with the district court that the imposition of this fee does not violate the Eighth Amendment"); *San Huan New Materials High Tech, Inc. v. Int'l Trade Comm'n*, 161 F.3d 1347, 64 (Fed. Cir. 1998) (upholding fine after comparing it to "value of [patent] infringing magnets" and concluding that a fine of "three times th[at] value [was] well within

constitutional limits"). The relatively low percentages Nassau County has applied – compared, for example, to New York City's five-percent-of-assessed-value fine, *see* N.Y.C. Administrative Code § 11-208.1(d)(1) – also suggest that the penalty is proportional, *see Grashoff v. Adams*, 65 F.4th 910, 919–20 (7th Cir. 2023) (considering "penalties for similar conduct" in other jurisdictions as "relevant evidence of legislative judgments about the seriousness of the offense").

[15]*Finally*, "the nature of the harm caused by the defendant's conduct" also favors the fine imposed here. *Viloski*, 814 F.3d at 110 (internal quotation marks omitted). The Trust contends that its intentional decision to flout the law "affected ***329** only the government," Trust Br. at 34, and it again points to *Bajakajian*, where the Supreme Court stressed that "[t]he harm that [the defendant] caused was ... minimal" because it "affected only ... the [g]overnment, and in a relatively minor way." 524 U.S. at 339, 118 S.Ct. 2028. But this case does not resemble *Bajakajian*: there, the government had charged the defendant under a currency-reporting statute intended to foil "money launderer[s]," "drug trafficker[s]," and "tax evader[s]." *Id.* at 338, 118 S.Ct. 2028. Because the defendant was not committing any of those crimes, he "deprived [the government] only of the information that [his cash] had left the country," *id.* at 339, 118 S.Ct. 2028 – which, on its own, was of little interest to the government. Here, by contrast, the ASIE Law focuses specifically on collecting financial information from property owners to help the County produce "more accurate assessments." Sp.

App'x at 51. By willfully refusing to supply that data, the Trust thwarted the statute's purpose, deprived the government of potentially useful information, and risked draining the public coffers.

[16]In sum, the district court correctly upheld the ASIE fine. When the owner of a multi-hundred-million-dollar property is fined a fraction of one percent of the property's value for willfully and repeatedly refusing to comply with a law, it cannot complain that the penalty was "grossly disproportional" to its wrongdoing. *Cf. United States v. Schwarzbaum*, 127 F.4th 259, 283–84 (11th Cir. 2025) (upholding several multimillion-dollar fines equal to 50% of value of unreported bank accounts because "Congress sought to deter precisely the harm for which [the defendant wa]s culpable, Congress considered that harm to be a very serious one, and Congress's method of deterring that harm is rational").

B. The Trust's Procedural-Due-Process Challenge Fails.

[17]The Trust next contends that the district court erroneously rebuffed its procedural-due-process claim, which alleged that the County unconstitutionally imposed the fines at issue "without providing [the Trust] with any notice or an opportunity to challenge [them]." Trust Br. at 37. Again, we disagree.

[18]The Fourteenth Amendment prohibits state governments from "depriv[ing] any person of ...

property[ ] without due process of law." U.S. Const. amend. XIV. To win on a procedural-due-process claim, a plaintiff "must be able to demonstrate (1) that [the d]efendants deprived [it] of a cognizable [property] interest ... (2) without affording [it] constitutionally sufficient process." *Proctor v. LeClaire*, 846 F.3d 597, 608 (2d Cir. 2017). While the parties spar over whether the Trust has been deprived of any property interest, we need not reach that issue because state law provided adequate process here.

[19]To determine whether process is adequate, we consider the familiar factors set forth in *Mathews v. Eldridge*: (1) "the private interest" of the plaintiff; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest." 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). "[W]e [have] f[ound] that the second *Mathews* factor weighs dispositively in favor of the government," *N.Y. State Nat. Org. for Women v. Pataki*, 261 F.3d 156, 168 (2d Cir. 2001) [hereinafter "*NYSNOW*"], when plaintiffs have timely access to the remedies available under Article 78 – an all-purpose statute that "provides both a hearing and a means of redress for petitioners," ***330** *Hellenic Am. Neighborhood Action Comm. v. City of New York*, 101 F.3d 877, 881 (2d Cir. 1996).

There can be no dispute that the Trust had such access (and additional process) here. Before assessing ASIE fines, the County ordinarily sends letters to

noncompliant property owners notifying them of the potential fines and providing an opportunity to cure. Should an owner claim not to have received that letter, the County confirms that the address on file for that owner is correct. If it is, and if the County persists in seeking to collect the fine, the property owner may then seek an injunction preventing enforcement of the fine under Article 78. "Given the availability of [such] Article 78 procedures, which can be invoked *before* actual prejudice arises" (indeed, before the fine is ever collected), *NYSNOW*, 261 F.3d at 168, the process afforded here is "adequate," *Rivera-Powell v. NYC Bd. of Elections*, 470 F.3d 458, 466 (2d Cir. 2006) (Sotomayor, *J.*); *see Hellenic Am. Neighborhood Action Comm.*, 101 F.3d at 881.[6]

C. The Trust's Substantive Due Process Challenge Fails.

[20]The Trust next contends that the ASIE Law "violated [its] substantive Due Process rights." Trust

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[6] The parties also debate whether the alleged "failure to send [notice] letters" stemmed from "systemic" issues or was instead an "isolated incident." Trust Br. at 45 (emphasis omitted). In an enforcement action initiated by the County or in an Article 78 proceeding initiated to enjoin enforcement, the Trust would be able to challenge the fine on the ground that the County failed to send a notice letter. Because the availability of that defense guarantees that a property owner will not be fined without notice and an opportunity to be heard – and therefore satisfies the Due Process Clause – we need not decide whether the County's conduct was systemic or isolated. *Cf. Rivera-Powell*, 470 F.3d at 467.

Br. at 49. We are not persuaded.

[21] [22]The Fourteenth Amendment "cover[s] a substantive sphere as well [as a procedural one], 'barring certain government actions regardless of the fairness of the procedures used to implement them.' " *County of Sacramento v. Lewis*, 523 U.S. 833, 840, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) (quoting *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986)). But "[l]egislative acts that do not interfere with fundamental rights or single out suspect classifications carry with them a strong presumption of constitutionality," and we will strike down such a law "only when a plaintiff can demonstrate that there is no rational relationship between the legislation and a legitimate legislative purpose." *Beatie v. City of New York*, 123 F.3d 707, 711 (2d Cir. 1997).

[23] [24]Here, the Trust contends that the ASIE Law "had no rational relationship to the claimed objective of improving assessments," and was in fact "aimed solely at revenue generation." Reply Br. at 22–23. The Trust notes that (i) "the prior $500 penalty achieved ... compliance" rates comparable to the updated law's stiffer fines; (ii) the ASIE data that the law aimed to gather turned out to be "wholly useless[ ] for assessment purposes"; and (iii) the County subsequently passed an "Amnesty Law" allowing property owners to settle ASIE fines without submitting ASIE statements. *Id.* But to prevail on its substantive-due-process claim, the Trust must "discredit any conceivable basis [that] could be

advanced to support the challenged provision, regardless of whether that basis has a foundation in the record or actually motivated the legislature." *Beatie*, 123 F.3d at 711 (citation omitted). Furthermore, the Trust's retrospective quibbles with the ASIE Law do not make it unconstitutional: "litigants may not procure invalidation of ... legislation merely ***331** by tendering evidence in court that the legislature was mistaken." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464, 101 S.Ct. 715, 66 L.Ed.2d 659 (1981). When it enacted the ASIE Law, the County "legislature *could* rationally have decided that the statute would fulfill [its] intended purpose," *Catlin v. Sobol*, 93 F.3d 1112, 1120 (2d Cir. 1996) (emphasis added), of helping the County produce "more accurate assessments," Sp. App'x at 70 (internal quotation marks omitted). That is all that rational basis review requires.[7]

D. The District Court Correctly Denied the Trust's Sanctions Motion.

[25] [26]Finally, the Trust argues that the district court incorrectly denied its sanctions motion, which was based on its allegations of misconduct by the County and its officers in their characterizations of the ASIE Law and the storage of ASIE data. But while federal

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[7] "[B]ecause all of [the Trust's] federal claims were properly resolved, the district court did not err in declining to exercise supplemental jurisdiction over any [of its] state[-]law claim[s]." *Russo v. Patchogue-Medford Sch. Dist.*, 129 F.4th 182, 187 (2d Cir. 2025); *see also* 28 U.S.C. § 1367.

courts have the "inherent power ... to levy sanctions in response to abusive litigation practices," *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980), the party seeking sanctions for fraud must show "clear and convincing evidence of bad faith," *Yukos Cap. S.A.R.L. v. Feldman*, 977 F.3d 216, 235 (2d Cir. 2020).

The Trust has failed to make that showing here. Instead, it merely points to disputed facts regarding whether (i) one of Defendants' deponents incorrectly represented his after-the-fact sense of the usefulness of the ASIE data, and (ii) another deponent mischaracterized the County's data-security protocols. Having carefully reviewed the record below, we cannot say that the district court abused its discretion in concluding that these "potential (ingenuine) disputes" related only to "certain (immaterial) facts" on which it did not rely "in ruling upon the summary judgment [c]ross-[m]otions." Sp. App'x at 76–77; *see also Yukos Cap.*, 977 F.3d at 235 (explaining that "our review is highly deferential" because district courts enjoy wide discretion in this area).

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court granting Defendants' motion for summary judgment and denying the Trust's motion for sanctions.

Richard C. Wesley, Circuit Judge, concurring in part:

I concur in the panel's fine opinion, except as to Section II.A.1, which concludes that the Eighth Amendment's Excessive Fines Clause protects corporations. Because we need not decide that issue to resolve this appeal, I would leave that question for another day.

In this appeal, the Retail Property Trust (the "Trust")—a Massachusetts business trust—challenges a fine imposed by Nassau County, arguing, among other things, that the fine runs afoul of the Excessive Fines Clause. Neither we nor the Supreme Court has determined whether that Clause applies to corporations or trusts.[1]

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[1] None of our sister circuits have resolved this issue, either. *See United States v. Chaplin's, Inc.*, 646 F.3d 846, 851 n.15 (11th Cir. 2011) (assuming but not deciding that Eighth Amendment applies to corporations); *United States v. Pilgrim Mkt. Corp.*, 944 F.2d 14, 22 (1st Cir. 1991) ("We will assume for purposes of our discussion that the eighth amendment proscription against excessive fines applies to corporations, although this is a very tenuous assumption."). Indeed, the question—notwithstanding our previous decision holding that the Bill of Attainder Clause protects corporations, *Consol. Edison Co. of N.Y. v. Pataki*, 292 F.3d 338, 346–349 (2d Cir. 2002)—is not an uncomplicated one. As the majority notes, Maj. Op. at 9, "[w]hether or not a particular [constitutional] guarantee" protects corporations "depends on the *nature, history, and purpose* of the *particular* constitutional provision," *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 778 n.14, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978) (emphases added).

***332** Noting the dearth of guidance on the issue, the magistrate judge assumed without deciding that the Clause applied, resting her recommendation on the fact that, regardless, the fine was not excessive. The district judge adopted that recommendation without discussing the Clause's applicability. After the Trust appealed, the issue was raised by the Appellees as an alternative ground on which we might affirm the decision below.[2] The Trust replied, reasonably, that the Appellees' argument was "unfounded" because the Trust is not a corporation but a Massachusetts business trust. Trust's Rep. Br. at 7. It then devoted approximately one page of its reply to an argument that the Clause broadly applies to corporations.

Today, we "agree with the district court across the board" and "affirm the judgment in full." Maj. Op. at 4. Yet the majority takes a step beyond the course so ably charted by the judges below by engaging with a scarcely briefed question.[3] I see no need to decide that issue, for even if it is resolved in the Trust's favor, we must still affirm the result reached below. This

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[2] The Appellees also made this argument before the district court.

[3] There may not be any reason to distinguish the Excessive Fines Clause's applicability to corporations from its applicability to Massachusetts business trusts. But both the parties' appellate briefs and the majority opinion fail to analyze that question in any detail, leaving unattended any relevant differences in the forms under state law. *See Swartz v. Sher*, 344 Mass. 636, 639, 184 N.E.2d 51 (1962) (stating that a business trust is "in many respects similar to a corporation" but that "such trusts are not corporations, nor are they entities apart from the trustees").

approach is not novel. *See Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 276 n.22, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) ("Because of the result we reach today, we need not answer several questions that otherwise might be necessarily antecedent to finding the Eighth Amendment's Excessive Fines Clause applicable to an award of punitive damages, and that have not been briefed by the parties. We shall not decide whether the Eighth Amendment's prohibition on excessive fines applies to the several States through the Fourteenth Amendment, nor shall we decide whether the Eighth Amendment protects corporations as well as individuals."); *see also Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them."); *Camreta v. Greene*, 563 U.S. 692, 707, 131 S.Ct. 2020, 179 L.Ed.2d 1118 (2011) ("In general, courts should think hard, and then think hard again, before turning small cases into large ones.").

Our job, as I see it, is to do no more or less than decide the cases before us. *See United States v. Rubin*, 609 F.2d 51, 69 n.2 (2d Cir. 1979) (Friendly, *J.*, concurring), *aff'd*, 449 U.S. 424, 101 S.Ct. 698, 66 L.Ed.2d 633 (1981). Ultimately, what is dicta and what is holding here is not for me—or any member of this panel—to resolve. ***333** That is a question for a future panel; I leave it in their capable hands.

2025 WL 5153006

Only the Westlaw citation is currently available.
United States District Court, E.D. New York.

The RETAIL PROPERTY TRUST, Plaintiff,
v.
NASSAU COUNTY DEPARTMENT OF ASSESSMENT; James E. Davis, as Acting County Assessor; the Nassau County Legislature; and the County of Nassau, Defendants.

17-cv-2193 (JS)(AYS)
|
Signed March 28, 2025

MEMORANDUM & ORDER

SEYBERT, District Judge:

***1** On April 11, 2017, Plaintiff The Retail Property Trust (hereinafter, "Plaintiff" or "Trust") commenced this case against Defendants Nassau County Department of Assessment (hereinafter, "DOA"), James E. Davis, as Acting County Assessor (hereinafter, "Mr. Davis"), the Nassau County Legislature (hereinafter, "Legislature"), and the County of Nassau (hereinafter, "County") (collectively, "Defendants"), alleging constitutional violations from Defendants' enforcement of Section 6-30.0, et seq. of the Nassau County Administrative Code, as amended by the County Legislature on December 19, 2013 in Local Law 8-2013 (hereinafter, "ASIE Law"). (See generally, Compl., ECF No. 1.) Plaintiff is alleging Defendants violated: (1) the Excessive Fines Clause

under the Eight Amendment of the United States Constitution (hereinafter, "U.S. Constitution") (hereinafter, "Excessive Fines Claim"); (2) Procedural Due Process under the Fourteenth Amendment of the U.S. Constitution (hereinafter, "Procedural Due Process Claim"); (3) Substantive Due Process under the Fourteenth Amendment of the U.S. Constitution (hereinafter, "Substantive Due Process Claim") (hereinafter, (1)-(3) collectively, the "Federal Constitutional Claims"); (4) Article 1, § 6 of the New York Constitution (hereinafter, "N.Y. Constitution"); (5) Article I, § 5 of the N.Y. Constitution; and, (6) C.P.L.R. § 7803 (hereinafter, (4)-(6) collectively, the "State Constitutional Claims"). (See generally id.)

On October 27, 2017, Defendants filed a motion to dismiss. (See ECF No. 28.) On January 25, 2018, a conference was held before the Court, and after oral argument, the Court denied Defendants motion to dismiss.[1] (See ECF Nos. 34 & 35.) Defendants filed their answer on February 22, 2018. (See ECF No. 44.) Plaintiff's and Defendants' cross-motions for summary judgment (hereinafter, "Plaintiff's Motion" and "Defendants' Motion," respectively, and "Cross-Motions," collectively) were fully briefed on December 1, 2023. (See Pl.'s Mot., ECF No. 208; see Pl.'s Support Memo, ECF No. 209; see Defs.' Mot., ECF No. 178; see Defs.' Support Memo & Opp'n, ECF No. 212; see Pl.'s

[1] Then-District Judge Bianco was the presiding judge at that juncture in the case. The case was reassigned to the undersigned on May 31, 2019. (See Case Docket, May 31, 2019 Reassignment Order.)

Opp'n & Reply, ECF No. 213; see Defs.' Reply, ECF No. 214.)

On April 19, 2024, the Cross-Motions were referred to Magistrate Judge Anne Y. Shields (hereinafter, "Judge Shields") for a Report and Recommendation (hereinafter, "Report" or "R&R"). (See Case Docket, Apr. 19, 2024 Referral Order.) On August 21, 2024, Judge Shields issued an R&R recommending the Court: (1) grant summary judgment in Defendants' favor on the Excessive Fines Claim; (2) grant summary judgment in Defendants' favor on the Procedural Due Process Claim; (3) grant summary judgment in Defendants' favor on the Substantive Due Process Claim; and (4) decline to exercise supplemental jurisdiction over the State Constitutional Claims. (R&R, ECF No. 221, at 25.)

***2** On September 18, 2024, Plaintiff filed objections to Judge Shields' R&R (hereinafter, "Objections"). (Pl.'s Objs., ECF No. 225.) Defendants responded to Plaintiff's Objections on October 18, 2024 (hereinafter, "Response"). (Defs.' Resp., ECF No. 228.)

Parallel to the Cross-Motions being fully briefed, on October 2, 2023, Plaintiff filed a motion for sanctions (hereinafter, "Plaintiff's Sanctions Motion"). (See Pl.'s Sanctions Mot., ECF No. 196; see also Pl.'s Sanctions Support Memo., ECF No. 197.) Defendants then filed a cross-motion for sanctions on October 24, 2023 (hereinafter, "Defendants' Sanctions Motion"). (See Defs.' Sanctions Motion, ECF No. 205-1; see also Defs.' Support Memo & Opp'n, ECF No. 204-2.) On

November 7, 2023, Plaintiff filed its reply memorandum of law in further support of its motion for sanctions against Defendants and in opposition to Defendants' cross-motion (hereinafter, "Plaintiff's Sanctions Opposition and Reply"). (See Pl.'s Sanctions Opp'n & Reply, ECF No. 207.) Judge Shields issued a decision on August 21, 2024, denying Plaintiff's Sanctions Motion (hereinafter, the "Sanctions Ruling"). (See Aug. 21, 2024 Elec. Order.) Plaintiff appealed the Sanctions Ruling to the undersigned, filing its objections on September 18, 2024 (hereinafter, "Plaintiff's Sanctions Appeal"). (See Pl.'s Sanctions Appeal, ECF No. 226.) Defendants responded to Plaintiff's Sanctions Appeal on October 18, 2024 (hereinafter, "Defendants' Sanctions Appeal Response"). (See Defs.' Sanctions Appeal Resp., ECF No. 229.)

On October 25, 2024, Plaintiff filed a letter motion seeking leave to file replies in further support of (1) its Objections, and (2) its Sanctions Appeal, including its proposed replies as exhibits (hereinafter, "Motion for Leave to File Replies"). (See Pl.'s Motion for Leave, ECF No. 230; see Pl.'s Proposed Objs. Reply, ECF No. 230-1; see Pl.'s Proposed Appeal Reply, ECF No. 230-2.) Plaintiff also filed a letter motion on November 1, 2024, requesting oral argument on its Objections and Sanctions Appeal (hereinafter, "Motion for Oral Argument"). (See Pl.'s Request for Oral Argument, ECF No. 231.) Defendants filed a letter opposing both Plaintiff's Motion for Leave to File Replies and Motion for Oral Argument on November 4, 2024. (See Defs.' Letter Opp'n, ECF No. 232.)

For the reasons stated herein: (1) Plaintiff's Objections are OVERRULED, and the R&R is ADOPTED; therefore, Defendants' Motion is GRANTED; (2) Plaintiff's Sanctions Appeal is DENIED; (3) Plaintiff's Motion for Leave to File Replies is DENIED; and, (4) Plaintiff's Request for Oral Argument is DENIED.

BACKGROUND

I. Factual and Procedural Background

The Court presumes the parties' familiarity with, adopts, and incorporates herein, the factual and procedural background as set forth in the R&R. (R&R at 2-10.) See generally Sali v. Zwanger & Pesiri Radiology Grp., LLP, No. 19-CV-0275, 2022 WL 819178, at *1 (E.D.N.Y. Mar. 18, 2022) (where no party challenges magistrate judge's recitation of the factual and procedural background of the case, upon clear error review, adopting and incorporating same into court's order).

II. Judge Shields' R&R

Judge Shields' Report is summarized as follows:

A. Plaintiff's Excessive Fines Claim

Judge Shields determined Plaintiff's Excessive Fines Claim was lacking, and recommended granting

summary judgment in favor of Defendants. (See R&R at 11-17, 25.) Judge Shields applied the two-step inquiry courts apply to determine whether a financial penalty is excessive under the Eighth Amendment: first, whether the fine is at least, in part, punitive; and second, whether the fine is unconstitutionally excessive. (Id. at 12-13.) On the first step, Judge Shields determined the fine imposed by the ASIE Law is at least, in part, punitive, and thus, moved to the second step of the analysis.

***3** On the second step, Judge Shields applied the four-factor test set out by the Second Circuit in United States v. Viloski, that the Second Circuit adopted by applying the test articulated in United States v. Bajakajian. (R&R at 14 (first citing Viloski, 814 F.3d 104, 110 (2d Cir. 2016); then citing Bajakajian, 524 U.S. 321, 334, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998)).) These factors are: (1) "essence of the violation and its relationship to other prohibited activity;" (2) "[w]hether Plaintiff fits into the class of persons for whom violation fees were principally designed;" (3) "maximum fine that could have been imposed;" and (4) "nature of harm caused by Plaintiff's conduct." (Id. at 14-17.) After evaluating the four factors, Judge Shields determined "no reasonable fact finder could conclude that Plaintiff's [fines were] 'grossly disproportional' to the underlying violation," and, as such, the ASIE Law is not an excessive fine under the Eighth Amendment. (Id. at 17.)

B. Plaintiff's Procedural Due Process Claim

Judge Shields also determined Plaintiff's Procedural Due Process Claim was lacking, and recommended granting summary judgment in favor of Defendants. (See id. at 17-20, 25.) Judge Shields applied the balancing test stated in Mathews v. Eldridge, weighing the following factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (Id. at 19 (quoting Mathews v. Eldridge, 424 U.S. 319, 321, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).) Judge Shields concluded the availability of an Article 78 proceeding to Plaintiff provides it with sufficient procedural due process pursuant to the Mathews balancing test. (Id. at 20.) Because Plaintiff "ha[d] exercised its remedy under Article 78 before it ha[d] suffered any deprivation, [making] the Article 78 proceeding ... adequate to protect its due process rights," Judge Shields recommended Plaintiff's Procedural Due Process Claim be dismissed. (Id.)

C. Plaintiff's Substantive Due Process Claim

Judge Shields also determined Plaintiff's Substantive Due Process Claim was lacking, and recommended granting summary judgment in favor of Defendants.

(See id. at 17, 20-25.) Judge Shields reasoned the Second Circuit has not invalidated a statute as not rational because of changed circumstances, and, in accordance with Supreme Court precedent, noted the Second Circuit has "consistently held that a statute may not be invalidated because there is evidence that the legislature was mistaken." (Id. at 23 (citing Bus. for a Better N.Y. v. Angello, 341 F. App'x 701, 704 (2d Cir. 2009)).) Therefore, because the stated legislative purpose of the ASIE Law at the time of its enactment was to "enhance the County's data in order to arrive at a more accurate assessment roll," the Legislature had a rational basis to enact the law. (Id.; see also Defs.' 56.1 Stmt., ECF No. 169, ¶ 16.) And, Judge Shields further found, even if the actual motivation was revenue generation, that is also a rational and legitimate governmental goal. (Id. at 24.) Judge Shields thus concluded: "no fundamental right was infringed, and because the ASIE [L]aw bears a rational relationship to a legitimate government purpose, no reasonable fact finder could conclude that Defendants violated Plaintiff's substantive due process rights." (Id.) Therefore, Judge Shields recommended Plaintiff's Substantive Due Process Claim be dismissed. (Id.)

D. Plaintiff's State Constitutional Claims

After recommending dismissal of all of Plaintiff's federal claims, Judge Shields recommended the Court decline to exercise supplemental jurisdiction over Plaintiff's State Constitutional Claim and dismiss them without prejudice. (R&R at 24-25.)

III. Plaintiff's Objections to the R&R

***4** Plaintiff raises several Objections to Judge Shields' R&R. First, Plaintiff contends its Excessive Fines Claim against Defendants should not be dismissed on summary judgment because: (1) the nearly $4.8 million penalty (hereinafter, the "ASIE Fine") was grossly disproportional to the alleged offense, which Plaintiff characterizes as simply a failure to provide data that was never intended to be, or actually was, used; and (2) there is no correlation between the fair market value of the property and the gravity of the offense, and thus, the penalty is not a modest one. (Pl.'s Objs. at 17-21.) Second, Plaintiff argues its Procedural Due Process Claim should not be dismissed since: (1) Judge Bianco previously ruled the availability of an Article 78 proceeding was not sufficient to defeat Plaintiff's Procedural Due Process Claim; and (2) an Article 78 proceeding is not an adequate procedural remedy after Plaintiff already was deemed in violation of the ASIE Law. (Id. at 21-26.) Third, Plaintiff contends its Substantive Due Process Claim should not be dismissed because: (1) Judge Shields' conclusion is not reconcilable with Judge Bianco's prior ruling; and (2) the only reason Defendants sought to change the penalty structure was for revenue generation. (Id. at 26-28.) Last, Plaintiff states supplemental jurisdiction should continue to be exercised. (Id. at 28-29.)

In response, Defendants argue: (1) regarding the Excessive Fines Claim, Judge Shields correctly applied precedent to conclude the ASIE Fine was not

unconstitutionally excessive in violation of the Eighth Amendment (Defs.' Resp. at 14-21); (2) regarding the Procedural Due Process Claim: (a) Judge Bianco's dismissal ruling merely noted Plaintiff had alleged it was not afforded a right to a hearing, and that allegation, if true, could give rise to a claim, and (b) pre-deprivation judicial review has been made available to Plaintiff without prejudice (id. at 21-25); (3) regarding the Substantive Due Process Claim, Judge Shields properly found Defendants had a rational basis for enacting the ASIE Law and it was of no moment the data ended up being unusable (id. at 25-28); and (4) regarding the State Constitutional Claims, Judge Shields correctly recommended all Plaintiff's federal law claims be dismissed, and, thus, the Court should decline to continue exercising supplemental jurisdiction over the remaining State Constitutional Claims (id. at 28).

The Court finds Plaintiff's Objections to be without merit and addresses each, in turn, below.

DISCUSSION

I. Legal Standards

A. Report and Recommendation

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); see also FED. R. CIV. P. 72(b)(3). The district judge must

evaluate proper objections de novo; however, where a party "makes only conclusory or general objections, or simply reiterates [the] original arguments, the Court reviews the Report and Recommendation only for clear error." Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008) (quoting Barratt v. Joie, No. 96-CV-0324, 2002 WL 335014, at *1 (S.D.N.Y. Mar. 4, 2002)); FED. R. CIV. P. 72(b)(3); see also U.S. Small Bus. Admin. v. Ameritrans Holdings, LLC, No. 20-CV-1166, 2024 WL 704621, at *2 (E.D.N.Y. Feb. 21, 2024) (applying clear error review where "[d]efendants' regurgitation of their original arguments [was] readily apparent when comparing their [underlying motion] to their [o]bjections"). Moreover, the Court need not review the findings and conclusions to which no proper objection has been made. Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985).

B. Summary Judgment

The Court shall grant summary judgment under Rule 56(a) when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A fact is material for the purposes of resolving a summary judgment motion "when it might affect the outcome of the suit under the governing law." Adamson v. Miller, 808 F. App'x 14, 16 (2d Cir. 2020). "An issue of fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. (quoting Jeffreys v. City of N.Y., 426 F.3d 549, 553 (2d Cir. 2005)).

"The movant bears the burden of 'demonstrat[ing] the absence of a genuine issue of material fact.' " Nick's Garage, Inc. v. Progressive Cas. Ins. Co., 875 F.3d 107, 114 (2d Cir. 2017) (alteration in original) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). This burden may be satisfied by either: (1) "submitting evidence that negates an essential element of the non-moving party's claim"; or (2) "demonstrating the non-moving party's evidence is insufficient to establish an essential element of the non-moving party's claim." Id. Once the moving party has met its burden, the non-moving party must "do more than simply show that there is some metaphysical doubt as to material facts" and, instead, offer "some hard evidence showing that its version of events is not wholly fanciful." Stein v. County of Nassau, 417 F. Supp. 3d 191, 197 (E.D.N.Y. 2019) (citations omitted).

***5** Furthermore, "[s]ummary judgment is inappropriate when the admissible materials in the record make it arguable that the claim has merit." Kaytor v. Elec. Boat Corp., 609 F.3d 537, 545 (2d Cir. 2010) (citations and quotation marks omitted). In reviewing the record, the Court "may not make credibility determinations or weigh the evidence" as such determinations are to be made by the jury, not the judge. Id. (citing Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)).

II. Analysis

A. The Objections Warrant Clear Error Review

Turning to the Objections, the Court finds them to be "'mere reiterations of the arguments in [the] original papers that were fully considered, and rejected, by' Judge Shields." Out of the Blue Wholesale, LLC v. Pac. Am. Fish Co., Inc., No. 19-CV-0254, 2020 WL 7488072, at *2 (E.D.N.Y. Dec. 21, 2020) (quoting Rizzi v. Hilton Domestic Operating Co., Inc., No. 19-CV-1127, 2020 WL 6243713, at *2 (E.D.N.Y. Oct. 23, 2020) (collecting cases)). Indeed, Plaintiff's regurgitation of its original arguments is apparent when comparing its underlying Support Memo to its Objections.[2]

[2] Plaintiff raises an argument in its Objections that was not raised in its original Motion papers. As a result, it was not considered by the court. The new argument is based upon a "law of the case" theory; specifically, Plaintiff asserts Judge Bianco's prior motion to dismiss rulings on Plaintiff's Procedural and Substantive Due Process Claims should stand, and therefore, these claims should not be dismissed at this stage of the case. (See, e.g., Pl.'s Objs. at 22-23, 26-27.) While Plaintiff did make a "law of the case" argument in its original Motion papers with respect to its Excessive Fines Claim, for the first time, in its Objections, Plaintiff makes a "law of the case" argument in support of its Procedural and Substantive Due Process Claims. However, arguments not raised below that are raised for the first time in an objection do not have to be addressed, as they are deemed waived. See Tevac, Inc. v. Dynamics eShop, Inc., No. 19-CV-3650, 2022 WL 4483439, at *3 (E.D.N.Y. Sept. 27, 2022) ("[I]t is established law that a district judge will not consider new arguments raised in objections to a magistrate judge's report and recommendation that could have been raised before the magistrate but were not." (quoting Zhao v. State Univ. of N.Y.,

(Compare Pl.'s Support Memo at 20-25 (arguing ASIE Fine violates Eighth Amendment because it is "punitive in nature" and "grossly disproportional to the gravity of the offense"), Pl.'s Opp'n & Reply at 14-18 (arguing a proceeding under Article 78 is not an adequate procedural remedy for Plaintiff's Procedural Due Process Claim), Pl.'s Support Memo at 32-33 (arguing Defendants never intended to use, and never actually used, the data submitted, making the imposition of the ASIE Fine violative of Plaintiff's Substantive Due Process rights), and Pl.'s Opp'n & Reply at 18-21 (arguing Defendants' imposition of the ASIE Fine "had no rational relationship to the claimed legislative objective of improving assessments," thus proving Plaintiff's Substantive Due Process Claim), with Pl.'s Objs. at 17-29 (same)[3].) Thus, the Court

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No. 04-CV-0210, 2011 WL 3610717, at *1 (E.D.N.Y. Aug. 15, 2011))); see also Page v. Ellenoff Grossman & Schole LLP, No. 22-CV-4453, 2023 WL 4841916, at *1 (S.D.N.Y. July 28, 2023), aff'd, No. 23-1199, 2024 WL 4195137 (2d Cir. Sept. 16, 2024). Even if the Court were to consider this argument, though, it would be unavailing. (See infra Sections II.B.ii.1 & II.B.iii.1.)

[3] Plaintiff also provides no argument regarding its State Constitutional Claims in its Objections, and merely makes a conclusory reference to its moving memorandum of law, with no proper citation to said memorandum: "[F]or the reasons discussed in Plaintiff's Moving Mem., summary judgment should be entered in favor of Plaintiff and against Defendants as to Plaintiff's claims arising under New York state law." (See Pl.'s Objs. at 28-29; see also Pl.'s Support Memo at 33-36.) Thus, having failed to meaningfully put forth a basis for de novo review, like the majority of Plaintiff's Objections, this one, too, shall be reviewed for clear error.

reviews Judge Shields' Report for clear error.

B. Plaintiff's Objections

i. Objection 1: Summary Judgment Should be Entered in Favor as to Plaintiff's Excessive Fines Claim

***6** As its first Objection, Plaintiff asserts the Magistrate Judge erred by recommending the Court enter summary judgment in favor of Defendants, and not Plaintiff, on Plaintiff's Excessive Fines Claim. Plaintiff argues Judge Shields' recommendation is incorrect because the nearly $4.8 million penalty was grossly disproportional to the offense and Judge Shields' findings were "conclusory" and "flatly contradicted by the record". (Pl.'s Objs. at 17-21.) This Court disagrees.

The Eighth Amendment to the U.S. Constitution declares: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. There is a two-step inquiry to determine whether a financial penalty is excessive: first, courts determine whether the fine is punitive in nature; second, if the fine is punitive in nature, courts determine whether the fine is unconstitutionally excessive. See Viloski, 814 F.3d at 108-10 (citing Bajakajian, 524 U.S. at 334, 118 S.Ct. 2028). A fine is unconstitutionally excessive "if it is grossly disproportional to the gravity of a defendant's offense." Id. at 110 (quoting Bajakajian,

524 U.S. at 334, 118 S.Ct. 2028). In Viloski, the Second Circuit interpreted the Supreme Court's decision in Bajakajian to require the court "to consider the following four [non-exhaustive] factors, which have become known as the 'Bajakajian factors,' " to determine whether a fine violates the Excessive Fines Clause:

> (1) the essence of the crime of the defendant and its relation to other criminal activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum sentence and fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct.

Id. (quoting United States v. George, 779 F.3d 113, 122 (2d Cir. 2015)).

It is not in dispute that at least one purpose of the ASIE Law is punitive in nature. (See R&R at 14.) Thus, moving to the second step of the inquiry, upon application of the Bajakajian factors, Defendants have shown there is no genuine dispute as to any material fact and they are entitled to judgment as a matter of law on Plaintiff's Excessive Fines Claim.

1. Factor One

Regarding the first factor, as Judge Shields observed,

"the ASIE Law was designed to improve compliance by amending the penalty for failure to file the ASIE Statement to provide that an owner who failed to timely comply with the ASIE Law would be penalized." (R&R at 15 (citing Defs.' 56.1 Stmt. ¶ 15); see also Defs.' 56.1 Stmt. ¶ 16.) Because Plaintiff did not provide its ASIE Statements for its Roosevelt Field Property for 2013 and 2014, this deprived Defendants of information it intended to use in future reassessments of properties; therefore, Plaintiff was assessed an initial fine of 0.5 percent of the fair market value of the Roosevelt Field Property for its noncompliance in 2013 (totaling $1,900,818.00), and a subsequent 0.75 percent fine for noncompliance in 2014, totaling $2,851,227.00. The aggregate was a $4,752,045.00 fine for noncompliance with the ASIE Law for the years 2013 and 2014. (Id.; see Defs.' 56.1 Stmt. ¶ 43; see Pl.'s 56.1 Stmt., ECF No. 168, ¶ 166 (citing Mar. 19, 2019 Arcuri Dep. Tr. 65:5-13, 66:7-9[4]).) The record demonstrates Plaintiff willfully violated the ASIE Law two years in a row (see Defs.' 56.1 Stmt. ¶ 37 (citing Exhibit G, ECF No. 178-8, Larson Dep. Tr. 191:15-195:15); see also id. ¶ 38). See, e.g., von Hofe v. United States, 492 F.3d 175, 188 (2d Cir. 2007) (upholding civil forfeiture of husband's interest in his family home because his drug activity in said home was "neither a spur of the moment decision nor a momentary lapse of judgment"); United

[4] Interestingly, to support this fact, Plaintiff cites only to the March 19, 2019 deposition transcript of Anthony Arcuri, which transcript Plaintiff requests be stricken from the record. (See generally Pl.'s Sanctions Appeal; see ECF No. 196-1.)

States v. Castello, 611 F.3d 116, 121-22 (2d Cir. 2010) ("Castello knowingly and willfully failed to file the CTRs ... [t]he first factor therefore weighs in favor of full forfeiture").

***7** One of Plaintiff's Objections is Judge Shields based her "erroneous holding on the unsupported proposition that a failure to provide ASIE Statements 'deprived Defendants of information it intended to use in performing a future reassessment of commercial properties in Nassau County.' " (Pl.'s Objs. at 17-18 (quoting R&R at 15).) This Court does not agree. The record reflects the goal of the ASIE Law was "to assist the Department of Assessment to develop a complete database ... and so allow the Department of Assessment to provide more accurate assessments ...." (Committee Tr. 6:22-7:10, Ex. J, ECF No. 178-16.)

Plaintiff also asserts Judge Shields "ignored that the ASIE data for Plaintiff's Roosevelt Field Property was especially useless because it could not be used to assess itself on a one-to-one basis." (Pl.'s Objs. at 18.) Plaintiff raised its "useless one-to-one basis" argument in its underlying papers, which papers Judge Shields considered. (See Pl.'s Opp'n & Reply at 9.) However, "there is no requirement for a court to specifically address each and every argument raised by a party in papers filed with the Court." Bertuzzi v. Copiague Union Free Sch. Dist., No. 17-CV-4256, 2023 WL 6211002, at *5 (E.D.N.Y. Sept. 25, 2023) (quoting Miller v. Metro. Life Ins. Co., No. 17-CV-7284, 2018 WL 5993477, at *5 n.5 (S.D.N.Y. Nov. 15, 2018)). Moreover, it is likely Judge Shields did not address

this argument because it is not relevant or material to the Court's analysis of the first factor. This Court finds no clear error in Judge Shields' determination that the first factor weighs against the ASIE Fine being grossly disproportional.

2. Factor Two

As to the second factor, Judge Shields concluded "[t]here is no dispute that as the property owner, Plaintiff falls into the class of persons for whom the violation fees were designed." (R&R at 15.) This is accurate. Plaintiff was part of such class, as the "intent of the [ASIE] Law is to enhance compliance from income producing properties in regards [sic] to the submission of income and expense statements," (Ex. O, ECF No. 178-16 at DEF000068), and Plaintiff owns the Roosevelt Field Property, an income producing commercial property. This second factor also weighs against the ASIE Fine being grossly disproportional.

3. Factor Three

With regard to the third factor, this Court agrees with Judge Shields: Because the "maximum fine that could be imposed is bounded by the 'fair market value' of the property," and, "the penalty is a percentage that increases the longer the non-compliance continues," this means the regulations setting forth the maximum fine that could be imposed "weighs heavily in Defendants' favor." (R&R at 16.) Plaintiff was initially fined 0.5 percent of the Roosevelt Field Property's fair market value for not filing its 2013 ASIE Statement,

and then 0.75 percent of the Roosevelt Field Property's fair market value for not filing its 2014 ASIE Statement. (See Defs.' 56.1 Stmt. ¶ 43; see Pl.'s 56.1 Stmt. ¶ 166.) Thus, the incrementally increasing fine imposed on Plaintiff fits within the statutory scheme, and because it is tied to the Roosevelt Field Property's fair market value, is not the maximum fine that could be imposed by the ASIE Law (as other properties could have higher fair market values, and thus incur greater fines). See, e.g., Sanders v. Szubin, 828 F. Supp. 2d 542, 554 (E.D.N.Y. 2011) ("In setting the parameters of proportionality, the Supreme Court has 'emphasized ... that judgments about the appropriate punishment for an offense belong in the first instance to the legislature.' " (quoting Bajakajian, 524 U.S. at 336, 118 S.Ct. 2028)). Moreover, while the ASIE Fine is not de minimis, the Sanders court explains how this actually supports a finding of proportionality: "The fine, of course, is not de minimus, nor would one expect a de minimus fine given the deliberateness and willfulness of the violation. This too, under the Second Circuit test, supports a finding of proportionality." Id. Thus, the third factor also weighs against a finding of gross disproportionality.

4. Factor Four

***8** Finally, the last factor to consider is the nature of the harm caused by Plaintiff's conduct. Plaintiff spends almost two pages of its Objections arguing there is no correlation between the fair market value of the property and the gravity of the offense. (See Pl.'s

Objs. at 19-21.) That argument is of no moment here.[5] In Sanders, and here, "it is true no individuals were harmed by [Plaintiff's] failure to [file] the [ASIE Statements]. No money or assets were lost or stolen. The only harm suffered by [Defendants] was [their] inability to obtain information." 828 F. Supp. 2d at 554. However, like Sanders, there is some generalized harm present, since the responses the ASIE Law required by statute were willfully ignored by Plaintiff. See id. As Judge Shields stated in her R&R, Defendants have shown the ASIE Law was meant to help the County improve its assessments by "assisting the DOA to develop a complete database of income and expense statement[s] for income producing properties so as to allow the DOA to provide more accurate assessments" in addition to working to "enhance the department's modeling capabilities, determine trends, identify outliers, track more effectively changes to income producing properties as they occur, and decrease and minimize the burden of the County having to pay refunds for inaccurate assessments." (R&R at 16-17 (citing Defs.' Support Memo & Opp'n at 26).) However, "a lack of a more 'tangible' harm does not excuse [P]laintiff's violation or hold [it] harmless from any penalty." Sanders, 828 F. Supp. 2d at 554 (explaining this fourth factor "merely serves as a

[5] The Court is aware Plaintiff raises this Objection with respect to Judge Shields' analysis of the third factor. The Court, however, deems it more appropriate to address this argument under the fourth factor. Ultimately, however, the factor under which this argument is addressed has no bearing upon the Court's conclusion.

bulwark against untoward severity" because it is "at best a meter, not a breaker short-circuiting all punishment," and finding plaintiff's excessive fines claim fails).

Plaintiff attempts to lodge another Objection, asserting, "Judge Shields failed to recognize the reason Plaintiff did not submit ASIE Statements, i.e., because of the highly confidential nature of the data and Defendants' complete lack of adequate safeguards to protect it." (Pl.'s Objs. at 20-21.) Plaintiff argued this point in its underlying papers. (See Pl.'s Support Memo at 8, 10 n.6, 16-17 & n.21, 33-36; see Pl.'s Opp'n & Reply at 15 n.9, 21-23.) As quoted, supra, "there is no requirement for a court to specifically address each and every argument raised by a party in papers filed with the Court." Bertuzzi, 2023 WL 6211002, at *5 (quoting Miller, 2018 WL 5993477, at *5 n.5). Simply, Plaintiff's purported rationale for its noncompliance is not a material fact to this part of the Court's analysis.

Having considered Judge Shields' application of the Bajakajian factors, in addition to Plaintiff's Objections to Judge Shields' recommendation on its Excessive Fines Claim, this Court finds no clear error in Judge Shields' determination that no reasonable fact finder could conclude the ASIE Fine was grossly disproportional to the underlying offense. Therefore, having found no clear error, the Plaintiff's Objections are OVERRULED; this Court adopts Judge Shields' recommendation and grants summary judgment in Defendants' favor on Plaintiff's Excessive Fines Claim.

ii. Objection 2: Procedural Due Process

As its second Objection, Plaintiff asserts the Magistrate Judge erred by recommending the Court grant summary judgment for Defendants on Plaintiff's Procedural Due Process Claim. No such error is had.

1. Plaintiff's "Law of the Case Doctrine" Objection

Plaintiff argues Judge Shields' recommendation that the availability of an Article 78 proceeding is adequate to protect Plaintiff's due process rights is incorrect because in ruling upon Defendants' dismissal motion, Judge Bianco already rejected Defendants' position and determined "that a post-deprivation remedy such as an Article 78 proceeding was inadequate where the deprivation was due to systemic failures relating to an established state procedure." (Pl.'s Objs. at 21-23.) As discussed above (see supra n.2), the Court does not have to consider this argument, since it could have, and was not, raised below. However, even if the Court were to engage in review of this argument, Plaintiff's Objection is unsustainable.

"The law of the case doctrine, although not binding, 'counsels a court against revisiting its prior rulings in subsequent stages of the same case absent 'cogent' and 'compelling' reasons,' including, inter alia, 'the need to correct a clear error or prevent manifest injustice.' " In re Peters, 642 F.3d 381, 386 (2d Cir. 2011) (quoting Ali v. Mukasey, 529 F.3d 478, 490 (2d Cir. 2008); see also D'Iorio v. Winebow, Inc., 68 F. Supp. 3d 334, 359

(E.D.N.Y. 2014).

***9** First, the law of the case doctrine is "not binding," and thus, is discretionary, which Plaintiff fails to acknowledge. See In re Peters, 642 F.3d at 386; see also Pescatore v. Pan Am. World Airways, Inc., 97 F.3d 1, 8 (2d Cir. 1996) ("The doctrine is 'admittedly discretionary and does not limit a court's power to reconsider its own decisions prior to final judgment.' " (quoting Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992), cert. denied, 506 U.S. 820, 113, 113 S.Ct. 67, 121 L.Ed.2d 34 (1992))).

Second, Plaintiff is amiss in representing Judge Bianco rejected Defendants' position that Plaintiff had due process by way of a timely Article 78 proceeding. Judge Bianco ruled, because Plaintiff alleged it had "[n]o notice ... of any right to hearing or ability to challenge [the penalties pursuant to the ASIE Law]," "a plausible procedural due process claim has been stated" given Plaintiff's further allegation of Defendants' "policy of a systemic failure to provide notice." (Mot. to Dismiss Tr. 5:23-7:4, Ex. 38, ECF No. 208-35.) Judge Bianco did not opine on the interplay of an Article 78 proceeding and Plaintiff's Procedural Due Process Claim in dismissal ruling. Thus, this Court has no prior ruling to revisit under the law of the case doctrine regarding whether an Article 78 proceeding is adequate due process for Plaintiff.

Finally, even if Judge Bianco did rule Plaintiff stated a plausible due process claim despite the availability

of an Article 78 proceeding, the law of the case doctrine does not " 'preclude a district court from granting summary judgment based on evidence after denying a motion to dismiss based only on the plaintiff's allegations.' " In re Aluminum Warehousing Antitrust Litig., 520 F. Supp. 3d 455, 482-83 (S.D.N.Y. 2021), aff'd, No. 21-643, 2023 WL 7180648 (2d Cir. Nov. 1, 2023) (quoting Maraschiello v. City of Buffalo Police Dep't, 709 F.3d 87, 97 (2d Cir. 2013)); see also Kennedy v. Hirsch, No. 21-3155, 2023 WL 2564026, at *2 (2d Cir. Mar. 20, 2023) ("There was therefore no contradiction between the district court's initial determination that the complaint sufficiently alleged a conspiracy and its later conclusion, made after reviewing the evidence at the summary-judgment stage, that no reasonable jury could find for the [plaintiff] on that claim."). The legal standards for deciding motions to dismiss and motions for summary judgment are quite different. See Kennedy, 2023 WL 2564026, at *2 ("But this argument ignores the fundamental **difference** between the **standards** that apply with respect to a motion to dismiss and those that apply to a motion for summary judgment."). The law of the case doctrine is not applicable here. There was no error on Judge Shields' part. Therefore, Plaintiff's Objection is OVERRULED.

2. Plaintiff's Article 78 Proceeding Objection

Plaintiff also contends Judge Shields' recommendation is incorrect because Plaintiff received its first penalty notice after Plaintiff was already deemed to have violated the ASIE Law and

was assessed the ASIE Fine, and, "the law is clear that the mere availability of an Article 78 proceeding, by itself, does not defeat a procedural due process claim where the procedural due process violations at issue are based on systemic failures by the Defendants."[6] (Pl.'s Objs. at 23-26.)

***10** The Due Process Clause of the Fourteenth Amendment makes it unconstitutional for "any State [to] deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. "It is well established that many state-created privileges ... 'are not to be taken away without that procedural due process required by the Fourteenth Amendment.' " Curto v. Erie County Water Auth., No. 24-29-CV, 2025 WL 48150, at *1 (2d Cir. Jan. 8, 2025) (quoting Gudema v. Nassau County, 163 F.3d 717, 724 (2d Cir. 1998)). To prevail on a due process claim, a plaintiff must prove: "(1) that the Defendants

[6] Plaintiff also mentions "the only reason Defendants have taken no enforcement action yet against Plaintiff is because the parties entered into a stipulation precluding them from doing so." (Pl.'s Objs. at 24.) The Court deems this fact as not material, as Plaintiff is unable to point to any case law or other information that would make it such, and it has no impact on the analysis of Plaintiff's Procedural Due Process Claim. The relevant material facts are: Plaintiff has admitted it has not paid the ASIE Fine and no lien has been placed on the Roosevelt Field Property. (See Pl.'s 56.1 Counter-Stmt., ECF No. 172, ¶ 48 Response ("Plaintiff disputes this statement to the extent it might imply that Defendants have voluntarily agreed to not place any liens ... or take any other enforcement actions.").) Whether this decision was "voluntary" or "stipulated to" is of no moment to this analysis.

deprived [her] of a cognizable interest in life, liberty, or property; (2) without affording [her] constitutionally sufficient process." Id. (quoting Proctor v. LeClaire, 846 F.3d 597, 608 (2d Cir. 2017)). The Objection lodged by Plaintiff has to do with the sufficiency, or what it claims is insufficiency, of process.

Specifically, Plaintiff is alleging "the mere availability of an Article 78 proceeding, by itself, does not defeat a procedural due process claim where the procedural due process violations at issue **are based on systemic failures by the Defendants**." (Pl.'s Objs. at 24 (emphases in original).) The Second Circuit has determined "[w]hen the deprivation occurs in the more structured environment of established state procedures, rather than random acts, the availability of post[-]deprivation procedures will not, ipso facto, satisfy due process." Nestle Waters N. Am., Inc. v. City of N.Y., No. 15-CV-05189, 2016 WL 3080722, at *7 (S.D.N.Y. May 25, 2016), aff'd, 689 F. App'x 87 (2d Cir. 2017) (quoting Hellenic Am. Neighborhood Action Comm. v. City of N.Y., 101 F.3d 877, 880 (2d Cir. 1996) (hereinafter, "HANAC")).

First, Plaintiff attempts to claim Judge Shields "acknowledged Defendants' systemic failures to provide proof of proper mailing regarding the pre-deprivation penalty notices." (Pl.'s Objs. at 24-25.) This is a mischaracterization of the Magistrate Judge's Report. Judge Shields acknowledged Defendants did not have an internal memorialization procedure in place. (R&R at 7 (citing Pl.'s 56.1 Stmt.

¶¶ 97-98 (first citing Mar. 19, 2019 Arcuri Dep. Tr. 239:15-21, then citing Oct. 19, 2018 Arcuri Dep. Tr. 270:5-12[7]).) However, Judge Shields ultimately concluded: "[W]hether the mailing process is satisfactory, and whether Plaintiff received the notices, while factual disputes, are not genuine issue[s] regarding material facts because, regardless of the answer, the availability of the Article 78 proceeding provides Plaintiff with due process when the Matthews [sic] balancing test is applied." (Id. at 20.) This Court finds no clear error in that conclusion; it elucidates, below.

In the context of IDEA cases, "[t]o sustain a claim of systemic violation, [p]laintiff would have to allege that a lack of training ha[d] rendered the process of handling IDEA claims non-compliant with due process in a substantial number of other proceedings, thus calling into question the resolution process in general." M.F. v. N.Y.S. Educ. Dep't, No. 17-CV-1385, 2020 WL 1820125, at *2 (N.D.N.Y. Apr. 10, 2020) (emphasis in original) (quoting Canton Bd. of Educ. v. N.B., 343 F. Supp. 2d 123, 128 (D. Conn. 2004)). This is because "[s]uccessful 'systemic' violations are often found 'when the conduct alleged to have violated IDEA affected all students in a given program' as

[7] Yet again, and to the utter confusion of the Court, for support for these facts, Plaintiff cites only to the March 19, 2019 and October 19, 2018 deposition transcripts of Anthony Arcuri, which transcripts Plaintiff requests to be stricken from the record. (See supra n.4; see also Pl.'s Sanctions Mot.; see also Pl.'s Sanctions Appeal; see also ECF No. 196-1.)

opposed to its affect [sic] on an individual." Id. at *2 n.3 (emphasis in original) (quoting Kalliope R. ex rel. Irene v. N.Y.S. Educ. Dep't, 827 F. Supp. 2d 130, 139 (E.D.N.Y. 2010)). In this instance, Plaintiff asserts "11% of the Cure or Be Heard Letters were returned in the mail as undeliverable due to 'bad addresses,' and in some years, the return rate was as high as 20%." (Pl.'s Objs. at 26; see Pl.'s Support Memo at 13 (citing Mar. 19, 2019 Arcuri Dep. Tr. 242:22-244:20[8]).) However, a range of 11 to 20 percent of mail being undeliverable, something that is not necessarily within the control of Defendants, does not rise to the systemic violation of affecting a "substantial number," let alone "all" of those falling under the purview of the ASIE Law. See M.F., 2020 WL 1820125, at *2 & n.3; see also DeStefano v. Inc. Vill. of Mineola, No. 17-CV-2250, 2018 WL 4100495, at *7 (E.D.N.Y. Aug. 28, 2018) (reasoning plaintiff's allegation that defendant's procedural due process violations are systemic, as opposed to random, fails, because "two instances do not an 'established procedure' make"). Nonetheless, as in the DeStefano case, this Court "will assume that the deprivation occurred pursuant to establish procedure" to continue the analysis and address all of Plaintiff's Objections. See DeStefano, 2018 WL 4100495, at *7.

***11** Second, Plaintiff contends Judge Shields' reliance

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[8] Once more, this Court would be remiss not to note its bewilderment at Plaintiff's continued reliance upon facts seemingly contained only in the March 19, 2019 deposition transcript of Arthur Arcuri. (See supra notes 4 & 7.)

upon Rivera-Powell v. New York City Board of Elections, 470 F.3d 458, 468 (2d Cir. 2006) is misplaced. (Pl.'s Objs. at 25.) Plaintiff tries to distinguish Rivera-Powell by highlighting the plaintiff there "received at least some form of pre-deprivation hearing" with an attorney present to voice plaintiff's position. (Id. (quoting Rivera-Powell, 470 F.3d at 466).) What Plaintiff fails to acknowledge is it has not been deprived of its property interest yet; thus, Judge Shields did not err in finding "Plaintiff has exercised its remedy under Article 78 before it has suffered any deprivation at all" which "is adequate to protect its due process rights." (R&R at 19 (emphasis added).) Moreover, while lamenting not having a "pre-deprivation hearing opportunity," Plaintiff states "the mere availability of an Article 78 proceeding should not have led Magistrate Judge Shields to recommend entry of summary judgment against Plaintiff on its due process claim." (Pl.'s Objs. at 25.) Again, for purposes of analysis, the Court will also accept Plaintiff's position that it did not have a "pre-deprivation hearing opportunity" (in addition to assuming the deprivation occurred pursuant to established state procedure, as discussed supra). Yet, that does not warrant sustaining Plaintiff's Objection.

Notwithstanding the Second Circuit concluding when state procedure has caused deprivation, the availability of a post-deprivation procedure will not ipso facto meet the standard of due process, see HANAC, 101 F.3d at 880, "that does not mean that a pre-deprivation hearing is required in every case involving established state procedures. Instead, in the

event of such a deprivation, courts must determine what process was due by balancing the factors outlined in Mathews." Morton v. County of Erie, 335 F. Supp. 3d 449, 458 (W.D.N.Y. 2018), aff'd, 796 F. App'x 40 (2d Cir. 2019); see also Nestle Waters N. Am., Inc., 2016 WL 3080722, at *9 ("[W]here a due process violation is based on an established procedure rather than a random, unauthorized act, the availability of additional process in an Article 78 proceeding does not [ ] bar a due process claim but, rather, is a relevant factor in the Mathews analysis." (quoting Rothenberg v. Daus, 481 F. App'x. 667, 676 (2d Cir. 2012), as amended (July 27, 2012))); Rivera-Powell, 470 F.3d at 466 ("If, on the other hand, we were to find that the Board's decision was part of an established state procedure, such that the availability of a post-deprivation remedy would not automatically satisfy due process, we would merely go on to determine what process was due."). Thus, Plaintiff's claim that "the law is clear that the mere availability of an Article 78 proceeding, by itself, does not defeat a procedural due process claim where the procedural due process violations at issue **are based on systemic failures by the Defendants**" is a mischaracterization of the law at best, and lacking in candor to the Court at worst. (See Pl.'s Objs. at 24 (emphases in original).)

As stated previously, courts employ the test from Mathews v. Eldridge to determine whether there has been sufficient procedural protections, weighing: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the

probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Black v. Decker, 103 F.4th 133, 147 (2d Cir. 2024) (quoting Mathews, 424 U.S. at 335, 96 S.Ct. 893); see also Corsini v. City of N.Y., No. 20-CV-05459, 2023 WL 4420113, at *6-*7 (E.D.N.Y. July 10, 2023), aff'd, No. 23-1065-CV, 2024 WL 2270130 (2d Cir. May 20, 2024).

Plaintiff does not lodge a specific Objection as to Judge Shields' weighing of the Mathews factors. (See generally Pl.'s Objs.) Moreover, upon review of the Report, this Court agrees with Judge Shields' analysis of the Mathews balancing test. (See R&R at 20.) There is no genuine dispute of material fact that Plaintiff knew about the law, its obligations under the law, and the penalties under the law (see Defs.' 56.1 Stmt. ¶ 37 (citing Larson Dep. Tr. 191:15-195:15, Ex. G); Plaintiff has available adequate procedure under Article 78 to protect its due process rights (see, e.g., Defs.' 56.1 Stmt. ¶ 31), just as the Rivera-Powell court determined the available state court procedure in that case was adequate, see 470 F.3d at 466-67; and, the County here has an interest in "assist[ing] the Department of Assessment to develop a complete database ... and so allow the Department of Assessment to provide more accurate assessments ...." (Committee Tr. 6:22-7:10, Ex. J.) Having assessed the application of the Mathews balancing test, this Court agrees with Judge Shields that "the Article 78

proceeding is adequate to protect [Plaintiff's] due process rights." (R&R at 20.)

***12** Therefore, finding no clear error, this Court OVERRULES Plaintiff's Objections and adopts Judge Shields' recommendation; hence, the Court further grants summary judgment for Defendants, thereby dismissing Plaintiff's Procedural Due Process Claim.

iii. Objection 3: Substantive Due Process

As its third Objection, Plaintiff claims Judge Shields erred by recommending the Court grant summary judgment for Defendants on Plaintiff's Substantive Due Process Claim. Plaintiff argues Judge Shields' conclusion "is both irreconcilable with Judge Bianco's prior ruling denying Defendants' motion to dismiss, and the summary judgment record, which conclusively establishes that Defendants in fact violated Plaintiff's substantive due process rights." (Pl.'s Objs. at 26-27.) There is no such error.

1. Plaintiff's "Law of the Case Doctrine" Objection

Plaintiff attempts to make another "law of the case doctrine" argument, citing a portion of Judge Bianco's ruling on Defendants' motion to dismiss regarding Plaintiff's Substantive Due Process Claim. (See id.) As discussed earlier in this Decision (see supra n.2), the Court does not have to consider this argument since Plaintiff did not raise it below. However, if the Court did engage in a review of this argument, Plaintiff's Objection would be unavailing.

The Court has already stated the legal standards for the law of the case doctrine earlier in this Decision and incorporates that analysis herein. (See supra Section II.B.ii.1.)

Judge Bianco merely held, "based upon the face of the complaint[,] a plausible substantive due process claim has been stated." (Mot. to Dismiss Tr. 9:12-19, Ex. 38.) That does not mean, at a later stage in the litigation, i.e., at summary judgment, when reviewing the further developed factual record and analyzing the legal landscape from a different standard, the Court cannot decide differently. See In re Aluminum Warehousing Antitrust Litig., 520 F. Supp. 3d at 482 (explaining the law of the case doctrine does not " 'preclude a district court from granting summary judgment based on evidence after denying a motion to dismiss based only on the plaintiff's allegations'." (quoting Maraschiello, 709 F.3d at 97)). Thus, Plaintiff's law of the case doctrine Objection falls flat, and is OVERRULED.

2. Plaintiff Argues Defendants Sought to Change the Penalty Structure Only for Revenue Generation

Plaintiff also contends Judge Shields erred in recommending summary judgment for Defendants on Plaintiff's Substantive Due Process Claim because "the imposition of these vastly increased penalties under the ASIE Law had no rational relationship to the claimed legislative objective of improving assessments." (See R&R at 27.) Judge Shields

committed no such clear error.

As stated above, the Fourteenth Amendment Due Process Clause makes it unconstitutional for states to "depriv[e] any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment not only guarantees procedural due process rights, but also "cover[s] a substantive sphere ... 'barring certain government actions regardless of the fairness of the procedures used to implement them.' " Matzell v. Annucci, 64 F.4th 425, 436 (2d Cir. 2023) (quoting County of Sacramento v. Lewis, 523 U.S. 833, 840, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)). Moreover, the law of the Second Circuit states: "[W]here, as here, a statute neither interferes with a fundamental right nor singles out a suspect classification, we will invalidate [that statute] on substantive due process grounds only when a plaintiff can demonstrate that there is no rational relationship between the legislation and a legitimate legislative purpose." Molinari v. Bloomberg, 564 F.3d 587, 606 (2d Cir. 2009) (internal citations omitted). Moreover, "[l]egislative acts that do not interfere with fundamental rights or single out suspect classifications carry with them a strong presumption of constitutionality and must be upheld if 'rationally related to a legitimate state interest.' " Beatie v. City of N.Y., 123 F.3d 707, 711 (2d Cir. 1997) (emphasis added) (citing City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985)).

***13** Plaintiff does not dispute Judge Shields' determinations that the ASIE Law did not interfere with a fundamental right, and thus rational basis is the right standard of review to apply here. (See generally Pl.'s Objs. at 26-28.) What Plaintiff does attempt to dispute is that "the ASIE Law had no rational relationship to the claimed legislative objective of improving assessments." (Id. at 27.) Plaintiff points to various "material facts" (see id.) it contends "establish[ ] that no genuine issue of material fact exists that Defendants only increased the penalty structure for violations to generate needed revenue because it would have a positive impact on the County's budget." (Id.) However, these do not cause genuine disputes of material fact. The record reflects the goal of the ASIE Law, at the time it was so amended, and as stated at a Committee meeting of the Nassau County Legislature, was "to assist the Department of Assessment to develop a complete database ... and so allow the Department of Assessment to provide more accurate assessments ...." (Committee Tr. 6:22-7:10, Ex. J; see also Defs.' 56.1 Stmt. ¶ 16.) Improving the accuracy of assessments is conceivably a rational basis for the legislative action here. See Molinari, 564 F.3d at 608 (finding no substantive due process violation where "the City's purported reason for enacting [the new legislation was] to provide the voters with an opportunity to elect experienced public officials in a time of financial crisis" and it was "beyond dispute that extending New York City's term limits to three consecutive terms is rationally related to that legitimate objective"); see also Beatie, 123 F.3d at 712 ("To uphold the legislative

choice, a court need only find some 'reasonably conceivable state of facts that could provide a rational basis' for the legislative action." (quoting Heller v. Doe, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993))). Therefore, Plaintiff's argument the Defendants had an alternative rationale for enacting the ASIE Law is without merit.

While Plaintiff also tries to argue the data was never used and was "unusable" (see Pl.'s Objs. at 27), that is of no moment. That is because the "Second Circuit has not invalidated a statute as irrational based on changed circumstances." Jones v. Schneiderman, 888 F. Supp. 2d 421, 426 (S.D.N.Y. 2012). Moreover, the Supreme Court has held, " '[w]here there was evidence before the legislature reasonably supporting the classification, litigants may not procure invalidation of the legislation merely by tendering evidence in court that the legislature was mistaken.' " Id. (quoting Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464, 101 S.Ct. 715, 66 L.Ed.2d 659 (1981)).

Additionally, Plaintiff's contention that Defendants had no rational basis for the ASIE Law since the only reason Defendants changed the penalty structure was for revenue generation (see Pl.'s Objs. at 27) also falls flat. This argument is debunked by the Second Circuit's reasoning in Molinari, where the Circuit Court held that, even if the defendants also "may have been motivated by political reasons – the desire to remain in office and in positions of seniority – is inconsequential under our substantive due process analysis." 564 F.3d at 608.

Plaintiff also tries to distinguish Judge Shields' citation to Leder v. American Traffic Solutions, Inc. (See R&R at 24 (citing 81 F. Supp. 3d 211, 216 (E.D.N.Y.), aff'd, 630 F. App'x 61 (2d Cir. 2015)).) Plaintiff claims Judge Shields' citation is "inapposite" because in Leder, "the court held that the plaintiff failed to allege, in any more than conclusory fashion, that the defendants' motivation in installing red light cameras 'was money,' and that plaintiff's general reliance on articles ... failed to support the plaintiff's conclusion," while here, "the evidence [ ] conclusively establishes that Defendants had no legitimate basis for claiming that they would utilize ASIE data for 2013 and 2014 for purposes of reassessing commercial income-producing properties." (Pl.'s Objs. at 28.) Plaintiff's characterization of the evidence is hyperbolic. The Leder court found neither article relied upon by the plaintiff "plausibly suggest[ed] the kind of ... conduct that is required to sustain a substantive [d]ue [p]rocess claim." Leder, 81 F. Supp. at 225. Similarly here, no reasonable fact finder could find revenue generation was the only goal of the ASIE Law.

Therefore, finding no clear error, this Objection is OVERRULED, and Judge Shields' recommendation to grant summary judgment for Defendants on the Substantive Due Process Claim is adopted.

iv. Objection 4: State Constitutional Claims

As its final Objection, Plaintiff argues Judge Shields

"erred by recommending that supplemental jurisdiction be declined over Plaintiff's claims arising under New York state law on the basis that summary judgment should be entered against Plaintiff as to its claims arising under the United States Constitution." (Pl.'s Objs. at 28-29.) Plaintiff provides no meaningful argument why this recommendation is erroneous and why the Court should exercise supplemental jurisdiction over Plaintiff's State Constitutional Claims. (See generally Pl.'s Objs.)

***14** Because the Court adopts Judge Shields' recommendations as to Plaintiff's Federal Constitutional Claims and finds no clear error as to Judge Shields recommending the Court decline to exercise supplemental jurisdiction over Plaintiff's State Constitutional Claims (see R&R at 24-25,), the Court OVERRULES Plaintiff's Objection to same and adopts Judge Shields' recommendation and declines to exercise supplemental jurisdiction. See Gonzalez v. Micelli Chocolate Mold Co., 514 F. App'x 11, 12 (2d Cir. 2013) (concluding there was "no abuse of discretion in the magistrate judge's decision to decline to exercise supplemental jurisdiction over any state law claims that may have been set forth in [the] complaint").

III. Plaintiff's Sanctions Appeal

As discussed above, Plaintiff appealed to this Court Judge Shields' denial of its Sanctions Motion.

Plaintiff's Sanctions Motion, filed on October 2, 2023,

sought the following relief due to supposed intentional misrepresentations to the Court and to Plaintiff in various sworn documents: (1) the October 27, 2017 and November 12, 2018 affidavits of Anthony Arcuri be stricken from the record (hereinafter, the "Arcuri Affidavits"); (2) the October 19, 2018 and March 19, 2019 deposition transcripts of Anthony Arcuri be stricken from the record (hereinafter, the "Arcuri Depositions"); (3) an order precluding Defendants from referencing or relying upon the Arcuri Affidavits or the Arcuri Depositions; (4) an order precluding Defendants from referencing or relying upon the May 12, 2021 declaration of Anthony Paganini (hereinafter, (1)-(4), collectively, the "Disputed Testimony"); and, (5) reasonable attorneys' fees and costs incurred. (See generally Pl.'s Sanctions Mot.; see ECF No. 196-1.)

On August 21, 2024, Judge Shields denied Plaintiff's Sanctions Motions, stating: "The circumstances at issue do not rise to the level of sanctionable conduct. Plaintiff has set forth no evidence of fraud, or bad faith, nor any unconscionable scheme to obstruct justice. As such, the matters complained of are to be resolved on the merits." (See Aug. 21, 2024 Elec. Order.) On September 18, 2024, Plaintiff filed its objections to the Sanctions Ruling, and on October 18, 2024, Defendants filed their response. (See Pl.'s Sanctions Appeal; see Defs.' Sanctions Appeal Resp.)

In accordance with the Federal Magistrate Act, 28 U.S.C. § 636, and Rule 72 of the Federal Rules of Civil Procedure, magistrate judges have "broad discretion

to resolve non dispositive issues" which may be overturned by district courts "only where [the magistrate judge's decision] is clearly erroneous or contrary to law." Pall Corp. v. Entegris, Inc., 655 F. Supp. 2d 169, 172 (E.D.N.Y. 2008); 28 U.S.C. § 636(b)(1)(A); FED. R. CIV. P. 72(a). "An order is clearly erroneous if, based on all the evidence, a reviewing court is 'left with the definite and firm conviction that a mistake has been committed.' " Palladino v. JPMorgan Chase & Co., No. 23-CV-1215, 730 F.Supp.3d 4, 2024 WL 1672282, at *1 (E.D.N.Y. Apr. 18, 2024) (quoting Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc., 77 F.4th 74, 90 (2d Cir. 2023)) (further citations omitted). Magistrate judges are afforded "broad discretion in resolving discovery disputes" and reversal of discovery orders issued by a magistrate judge is appropriate only where "discretion is abused." Almakalani v. McAleenan, 527 F. Supp. 3d 205, 219 (E.D.N.Y. 2021). Furthermore, an order precluding the introduction of certain evidence or barring certain contentions "may also be properly characterized as non-dispositive ... [a]s long as the order does not wholly dispose of a party's claim or defense." Shanghai Weiyi Int'l Trade Co. v. Focus 2000 Corp., No. 15-CV-3533, 2017 WL 2840279, at *9 (S.D.N.Y. June 27, 2017) (quoting Seena Int'l, Inc. v. One Step Up, Ltd., No. 15-CV-1095, 2016 WL 2865350, at *10 (S.D.N.Y. May 11, 2016)); see also Update Art, Inc. v. Modiin Pub., Ltd., 843 F.2d 67, 70-71 (2d Cir. 1988).

***15** The Court finds Plaintiff's Sanctions Appeal to be without merit. Magistrate judges have broad

discretion to decide non-dispositive issues, and Judge Shields acted well within her discretion. Her Sanctions Ruling was neither clearly erroneous nor contrary to law. Indeed, having reviewed, inter alia, the Sanctions Ruling, Plaintiff's Sanctions Appeal, and Defendants' Sanctions Appeal Response, this Court is not definitively convinced that a mistake has been committed by Judge Shields. First, the Sanctions Ruling relates to discovery issues, i.e., the use of certain sworn statements made during depositions. Second, Plaintiff's claims are not evident of misrepresentations to the Court; at most, they relate to potential (ingenuine) disputes as to certain (immaterial) facts. Further, this Court has not relied upon the Disputed Testimony in ruling upon the summary judgment Cross-Motions.[9] As such, and since judgment will be entered in favor of Defendants, with all Plaintiff's claims dismissed, this Sanctions Appeal is rendered moot.

IV. Plaintiff's Motion for Leave to File Replies

On October 25, 2024, Plaintiff filed its Motion for Leave to File Replies, including as exhibits its proposed replies in further support of: (1) its Objections, and (2) its Sanctions Appeal. (See Pl.'s Motion for Leave; see Pl.'s Proposed Objs. Reply; see Pl.'s Proposed Appeal Reply.) On November 4, 2024,

[9] Plaintiff should not be permitted to use this evidence as both a sword and shield. The Court finds Plaintiff's blatant usage of the testimony it also seeks to preclude to be troubling, and warrants OVERRULING Plaintiff's objections to the Sanctions Ruling.

Defendants filed a letter opposing Plaintiff's Motion for Leave to File Replies. (See Defs.' Letter Opp'n.)

There is no "explicit provision" made for reply papers in Rule 72(a) or (b). See Alexander v. Evans, No. 88-CIV-5309, 1993 WL 427409, at *4 (S.D.N.Y. Oct. 15, 1993; see FED R. CIV. P. 72(a),(b). Moreover, replies in support of objections and appeals from magistrate judge decisions are not contemplated in the Local Rules nor in this Court's Individual Practice Rules. (See generally SDNY-EDNY Local Rules; see generally JS Ind. Rules.) While a judge "has discretion whether to receive further evidence, and therefore further argument," see Alexander, 1993 WL 427409, at *4 (citing Pan Am. World Airways, Inc. v. Int'l Bhd. of Teamsters, 894 F.2d 36, 40 n.3 (2d Cir. 1990)), in this instance, having reviewed the R&R, Plaintiff's Objections, and Defendants' Response, and, the Sanctions Ruling, Plaintiff's Sanctions Appeal, and Defendants' Sanctions Appeal Response, in its discretion, the Court finds Plaintiff's proposed replies unnecessary. Therefore, Plaintiff's Motion for Leave to File Replies is denied.

V. Plaintiff's Motion for Oral Argument

On November 1, 2024, Plaintiff also filed a Motion for Oral Argument. (See Pl.'s Request for Oral Argument.) Plaintiff requests oral argument for both the Cross-Motions that are the subject of this Decision, and also for Plaintiff's Sanctions Appeal. (See id.) On November 4, 2024, Defendants filed a letter opposing Plaintiff's Motion for Oral Argument.

(See Defs.' Letter Opp'n.)

Oral argument is not necessary. See JS Ind. Rule III.G ("If the Court determines it wishes to hear oral argument on a motion, it will schedule a hearing date and notify the parties of same."). Moreover, holding oral argument on the Cross-Motions and Plaintiff's Sanctions Appeal would be moot, given this Decision. Therefore, Plaintiff's Motion for Oral Argument is denied.

VI. Sealing

By electronic order (see May 17, 2022 Elec. Order), the Court summarily granted Defendants' request to file certain exhibits and documents relating to the summary judgment briefing under seal because of the Agreed Protective Order Regarding the Disclosure and Use of Discovery Materials (ECF No. 57) (hereinafter, the "Protective Order"). That Protective Order designated the disclosure and use of certain information as "Confidential Information" and for "Attorneys' Eyes Only." The prior magistrate judge in this action also ordered certain documents and deposition testimony were entitled to the "Attorneys' Eyes Only" designation. (See ECF No. 133; ECF No. 146.) However, many of the documents filed in this action in support of the summary judgment briefing and sanctions motion briefing have been filed fully under seal. (See, e.g., Pl.'s Support Memo; Pl.'s Objs.; Defs.' Resp.; Pl.'s Sanctions Support Memo.; Defs.' Support Memo & Opp'n; Pl.'s Sanctions Opp'n & Reply; Pl.'s Sanctions Appeal; Defs.' Sanctions Appeal

Resp.)

***16** There is a presumptive right of public access to judicial documents. See, e.g., United States v. Amodeo, 71 F.3d 1044, 1048 (2d Cir. 1995). "[I]t is well-settled that documents submitted to a court for its consideration in a summary judgment motion are – as a matter of law – judicial documents to which a strong presumption of access attaches, under both the common law and the First Amendment." Brown v. Maxwell, 929 F.3d 41, 47 (2d Cir. 2019) (citation omitted); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 140 (2d Cir. 2004) ("[T]he presumptive right to public observation is at its apogee when asserted with respect to documents relating to matters that directly affect an adjudication." (internal quotation marks omitted)); Joy v. North, 692 F.2d 880, 893 (2d Cir. 1982) ("[D]ocuments used by parties moving for, or opposing, summary judgment shall not remain under seal absent the most compelling reasons."). Judicial documents may only be kept under seal "if 'countervailing factors' in the common law framework or 'higher values' in the First Amendment framework so demand." Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 124 (2d Cir. 2006). If continued sealing of the documents is merited to preserve higher values, the sealing order must be "narrowly tailored to achieve that aim." Brown, 929 F.3d at 47.

Absent any legal analysis of each sealed document and an explanation or affidavit more specifically addressing why public disclosure of these documents would be competitively harmful, the parties have not

met their burden of proving that maintaining them under seal in their entirety is justified.

Accordingly, the parties are to file a letter addressing the need for continued sealing of each sealed document, per the below instructions. Further, because this Memorandum and Order contains information submitted under seal, the Clerk of the Court shall temporarily restrict access to this Memorandum and Order to case participants only pending the parties' compliance with the Court's instructions, and the Court's further order, regarding said compliance.

CONCLUSION

Accordingly, for the stated reasons, IT IS **HEREBY ORDERED**:

I. Plaintiff's Objections (ECF No. 225) to the R&R are OVERRULED.

II. The R&R (ECF No. 221) is ADOPTED in its entirety, with:

A. Plaintiff's Cross-Motion for Summary Judgment (ECF No. 208) being:

1. DENIED with prejudice as to the Federal Constitutional Claims; and,

2. DENIED without prejudice as to the State Constitutional Claims, over which the Court declines to exercise supplemental jurisdiction;

and,

B. Defendants' Cross-Motion for Summary Judgment (ECF No. 178) being GRANTED in its entirety.

III. Plaintiff's objections in support of its Sanctions Appeal (ECF No. 226) are OVERRULED.

IV. Judge Shields' August 21, 2024 Sanctions Ruling, denying sanctions, is AFFIRMED.

V. Plaintiff's Motion for Leave to File Replies (ECF No. 230) is DENIED.

VI. Plaintiff's Motion for Oral Argument (ECF No. 231) is DENIED.

VII. The Clerk of the Court is directed to enter judgment in favor of Defendants.

IT IS FURTHER ORDERED that **PLAINTIFF AND DEFENDANTS ARE HEREBY ORDERED TO SHOW CAUSE**, by filing a joint letter no later than thirty days after the date of this Memorandum & Order, why the sealed documents should remain sealed in their entirety;

IT IS FURTHER ORDERED that, since a sealing order must be narrowly tailored to preserve higher values, the parties are directed to address the extent to which the sealed documents can be redacted in accordance with the standard set forth by the Second Circuit, see Brown, 929 F.3d 41; Lugosch, 435 F.3d 110; in the alternative, the parties are directed to

explain why no redactions are possible;

IT IS FURTHER ORDERED that, in the event the parties determine that the sealed documents should be refiled with particular redactions, they must provide the proposed redactions to the Court;

IT IS FURTHER ORDERED that, within thirty days after the date of this Memorandum & Order, the parties shall submit proposed redactions, if any, to this Memorandum and Order. Further, because this Memorandum & Order contains information submitted under seal, the Clerk of the Court shall temporarily restrict access to this Memorandum & Order to case participants only pending further Order of the Court; and,

***17 IT IS FURTHER ORDERED, and THE PARTIES ARE ON NOTICE**, that, absent timely compliance with this Order to Show Cause, the Court will direct the Clerk of the Court to unseal the sealed documents and make publicly available this Memorandum & Order.

SO ORDERED.

2024 WL 4664644

Only the Westlaw citation is currently available.
United States District Court, E.D. New York.

The RETAIL PROPERTY TRUST, Plaintiff,
v.
NASSAU COUNTY DEPARTMENT OF ASSESSMENT, James E. Davis, as Acting County Assessor, the Nassau County Legislature and the County of Nassau, Defendants.

CV 17-2193 (JS)(AYS)
|
Signed August 21, 2024

REPORT AND RECOMMENDATION

SHIELDS, Magistrate Judge:

***1** Plaintiff The Retail Property Trust ("Plaintiff") commenced this case against defendants Nassau County Department of Assessment ("DOA"), James E. Davis, as Acting County Assessor ("Davis"), The Nassau County Legislature (the "Legislature"), and The County of Nassau (the "County") (collectively, "Defendants"), alleging constitutional violations arising from the Defendants' enforcement of Section 6-30.0, et seq. of the Nassau County Administrative Code as amended by the County Legislature on December 19, 2013, in Local Law 8 of 2013 (the "ASIE Law").

Presently before this court, on referral from the Honorable Joanna Seybert for report and

recommendation, are the parties' cross-motions for summary judgment.

For the reasons set forth below it is respectfully recommended that Defendants' motion be granted, Plaintiff's motion be denied, and the case dismissed in its entirety.

BACKGROUND

I. Basis of Facts Recited Herein

The facts set forth below are drawn largely from the parties' statements of material facts submitted pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the "Rule 56.1 Statements"). The facts are undisputed unless otherwise noted.

The Court turns to discuss the facts relied upon by the parties in connection with the present motion.

A. Factual Allegations

1. The Parties

Plaintiff owns Roosevelt Field Mall, which is considered self-managed with operational mall management services provided by employees of Simon Property Group, Inc.'s ("SPG") affiliated companies.

The County is a municipal cooperation and is responsible for assessing all commercial and residential properties located within the County. In addition to preparing the assessment roll, the County is also obligated to pay the full amount of any deficiency resulting from a decrease in an assessment pursuant to the Nassau County Administrative Code which provides, "Notwithstanding any provisions of this chapter, or any other general or special law to the contrary, any deficiency existing or hereafter arising from a decrease in an assessment or tax ... or by reason of exemptions or reductions of assessments shall be a county charge." Declaration of Laurel R. Kretzing ("Kretzing Decl."), Ex. W, DE [211-23]. Because of this, tax certiorari refunds became a significant liability of the County, costing approximately one hundred million dollars a year and the long-term liability for tax certiorari refunds were approximately three hundred and sixty million dollars in 2017. Defendants' Amended Rule 56.1 Statement ("Defs. 56.1"), DE [169], ¶¶ 10, 11.

2. Prior Law

In 1984, the original version of Sections 6-30.0, et seq. of the County's Administrative Code (the "Prior Law") mandated that "upon request of the Board of Assessors", commercial property owners were required to submit "a statement of all income derived from and all expenses attributable to the operation of such property." See Plaintiff's Amended Statement of Material Facts Pursuant to Local Civil Rule 56.1("Pl. 56.1"), DE [168], ¶ 4. The failure to provide such a

statement "upon request" resulted in the imposition of a fine of $500. Id. ¶ 5.

***2** The enforcement of the $500 fine led to "a high rate of compliance with the financial disclosure requirements." Pl. 56.1 ¶¶ 6, 10. Specifically, it resulted in an increase in compliance from 44% to 82%. Id. ¶ 11.

3. Passage of the ASIE Law

On December 9, 2013, the Legislature considered enacting the Annual Statement of Income and Expenses (the "ASIE") Law, which would result in a significant increase in the penalty structure. Pl. 56.1 ¶¶ 15, 18. The goal of the ASIE Law was to minimize assessment errors leading to refund liability. Defs. 56.1 ¶ 12. The ASIE Law was modeled after an existing New York City law. Id. ¶ 13, New York City Administrative Code § 11-208.1, which required income producing property owners to file annual income and expense report statements. The failure to do so was subject to a penalty calculated at a percentage of assessed value, increasing from 3% to 5% of the assessed value for repeated non-compliance. New York City Administrative Code § 11-208(d)(1). Similarly, the ASIE Law required commercial property owners, as defined by the ASIE Law, to file income and expense statements on an annual basis by April 1st of each year on an electronic form to be prepared by the Assessor. and authorized the Assessor to develop rules and regulations for the filing of the statements. Defs. 56.1 ¶ 14. The County

Legislature Office of Legislative Budget Review Fiscal Impact Statement concluded that the ASIE Law, if enforced, would have a positive impact on the County's budget. Pl. 56.1 ¶ 141.

The ASIE Law, which was passed on December 19, 2013, and became a law on December 27, 2013, provides that owners of Class IV properties in the County who fail to file the required ASIE Statements are subject to monetary penalties ranging from 0.25% up to 0.75% of the "fair market value" of the property, which penalty can become a lien on the real property, which "may be collected, sold, enforced or foreclosed in any manner provided by law." Pl. 56.1 ¶¶ 14, 22-24. The ASIE Law also permits "the publication of statistics ... or making known aggregate income and expense information disclosed." Pl. 56.1 ¶ 26

The ASIE Law was designed to improve compliance by imposing a penalty on owners of income producing properties for failure to file the ASIE Statement, which penalty was calculated as a percentage of the value of the property. If the Statement was not filed by April 1st, a fine not to exceed .25% of the fair market value of the income producing property was imposed. Defs. 56.1 ¶ 15. If the non-compliance was not remedied by September 30th, the penalty would be increased by an amount not to exceed .5% of the fair market value of the income producing property. Id. If the owner continued to fail to file, a penalty of up to .75% of the market value of the property would be imposed for each year that the owner failed to file. Id.

Defendants maintain that after the adoption of the ASIE Law, there was an increase in compliance with the law. Defs. 56.1 ¶ 18. Plaintiffs dispute this, contending that to be in compliance with the law, owners just had to pay the fines, they did not have to provide the income and expense statement. Plaintiff's Amended Counter-Statement of Facts Pursuant to Local Rule 56.1 ("Pl. Resp."), DE [172], ¶ 18.

***3** Following its adoption, the Assessor promulgated rules and regulations with respect to compliance with the ASIE Law, and enforcement of its provisions, including provisions for notice and an opportunity to be heard before penalties are imposed (the "DOA Rules"). Defs. 56.1 ¶ 27. Pursuant to Rule 4.0(a)(1)(i)(ii) of the DOA Rules, owners of income producing property who fail to file a timely statement must be served with a notice of the failure to file and advised that the penalty can be avoided if the income and expense statement is filed within thirty days of the Notice. Id. ¶ 28. Pursuant to Rule 4.0(a)(2) of the DOA Rules, owners of income producing property have thirty days from the date of the notice to request a hearing before the DOA. Id. ¶ 29. The DOA Rules contained rules governing the procedures for the hearing and the manner in which they could be requested. Id. ¶ 30. Pursuant to Rule 4.0(a)(9), all decisions rendered by the Assessor are reviewable under Article 78 of the Civil Practice Law and Rules. Id. ¶ 31.

4. The Amnesty Law

On November 21, 2016, the County adopted a local law providing partial "amnesty" for ASIE Law fines (the "Amnesty Law"). The Amnesty Law allowed owners that failed to comply with the ASIE Law to pay 75% of the fine in order to be deemed "compliant." A property owner did not have to file ASIE data in order to take advantage of the amnesty program. Pl. 56.1 ¶¶ 31-32, 150.

Prior to the enactment of the Amnesty Law, the compliance rates for the ASIE Law for the calendar years of 2013 and 2014 tax years were 56% and 66% respectively. Following the Amnesty Law's enactment, the compliance rates increased. These compliance rates include not only compliance solely through the submission of the ASIE Statements, but also compliance through payment of the amnesty amount.

5. Plaintiff's Non-Compliance With The ASIE Law

After the enactment of the ASIE Law in 2013, Plaintiff did not file an ASIE Statement. Defs. 56.1 ¶ 35. Plaintiff was aware of the ASIE Lw and had been notified of its obligation to file an ASIE Statement or suffer a penalty for the 2013 filing year by letter from the DOA dated January 31, 2014. Defs. 56.1 ¶ 37. Plaintiff's claim that their failure to file a 2013 ASIE Statement was due, in part, to litigation surrounding the ASIE Law's enactment at the time of the letter. Pl. Resp. ¶ 37. However, Plaintiff claims that it did not

receive notices of its failure to file ASIE Statements for the 2013 and 2014 filing years. Def. 56.1 ¶ 39.

On December 19, 2016, the Property Tax Department at SPG received two letters from the DOA, both of which were entitled "Failure to File Your Income and Expense Statement." One letter concerned real property identified as section 44, block 77, lot 68 on the County Tax Map ("Lot 68"). Pl. 56.1 ¶ 48. The letter stated:

> You have failed to file the required income and expense statement for the years identified in the box above [2013 and 2014]. In accordance with Section 6-30.0, the Nassau County assessor has determined that a civil penalty in the amount of 4,752,045 dollars ($4,752,045), has been imposed upon you because of your failure to satisfy the filing requirement.

(the "Lot 68 Penalty Notice"). Id. ¶ 49.

The other letter concerned real property identified as section 44, block 77, lot 27 on the County Tax Map ("Lot 27"). Pl. 56.1 ¶¶ 52-53. This penalty letter ("Lot 27 Penalty Letter") (collectively with the Lot 68 Penalty Notice, the "Penalty Notices") stated that Plaintiff was going to be further penalized "in the total amount of 1,164 dollars ($1,164) ... because of your failure to satisfy the filing requirement [for 2014

only].” Pl. 56.1 ¶ 54.

Defendants contend that they mailed a letter dated December 7, 2015 to Plaintiff referencing Lot 68 with the heading “Notice of Failure to Submit and File/Opportunity to Cure Letter” (“Cure Letter”). Plaintiff claims that it never received any such letter. Pl. 56.1 ¶¶ 57-58, 61-7.

To date, Plaintiff has not provided the ASIE Statements, nor has it paid the fines. Rather, Plaintiff commenced the instant action, including invoking an Article 78 proceeding within the Complaint.

6. Mailing Procedures

***4** Defendants did not have any “procedure in place to memorialize the fact” that the Cure Letter was mailed to Plaintiff, “like an affidavit, or something, internally.” Pl. 56.1 ¶ 97. Defendants also lack any “evidence of receipt” for the Cure Letter to Plaintiff, or any Class IV property owner. Pl. 56.1 ¶ 98. Defendants mailing procedures were not written down nor documented.

At least 20 Class IV property owners notified the DOA that they did not receive the Cure Letter, stating, inter alia, that they “never received notice for 2013 or 2014 that [they] had to file in the first place, nor did [they] receive that [they were] late.” Pl. 56.1 ¶¶ 107-108. Defendants’ policy towards Class IV property owners seeking a hearing and claiming that they did not receive the Cure Letter was to check that the

intended address in the Excel sheet was the proper address for the Class IV property owner. If the address was correct, a hearing was not permitted but the property owner could file an Article 78 proceeding. Pl. 56.1 ¶ 109; Defendants' Response to Plaintiff's Amended Statement of Material Facts Pursuant to Local Rule 56.1("Def. Resp."), DE [170], ¶ 109.

Plaintiff claims to have a detailed procedure that is followed to ensure that mail is delivered to the responsible individual within the department. Pl. 56.1 ¶ 58. The process includes not only distribution of the mail, but if a notice such as the Cure Letter had been received from the Defendants, the Property Tax Department would have opened it, date stamped it, and scanned it into the database where it would have been kept indefinitely. Pl. 56.1 ¶¶ 62-67. Plaintiff maintains that these procedures were adhered to with regard to the Penalty Notices, which Plaintiff admits receiving. Pl. 56.1 ¶ 70.

7. The ASIE Data

In 2011, prior to the ASIE Law's enactment, the County Executive "froze" increases to the assessed valuation of real property in the County in an effort to better study the problems in the assessment system. Defs. 56.1 ¶ 22. As it was unknown how long the freeze would last, the DOA continued to collect data. Defs. 56.1 ¶ 23.

In 2015, the County entered into a contract with Michael Haberman Associates ("MHA") to conduct a

systemic review of the County's assessment of commercial property in preparation for a reassessment. Defs. 56.1 ¶ 24. On January 1, 2018, a new County Executive took office and directed that the freeze be lifted, and that all property be reassessed for the tentative tax roll on January 2, 2019. Defs. 56.1 ¶ 25. MHA requested the ASIE data collected during the freeze to use in the reassessment. Defs. 56.1 ¶ 26. However, once it was received, MHA did not understand the data and therefore, did not use the ASIE data in the reassessment. Pl. 56.1 ¶¶ 124-126. MHA explained that "you couldn't make heads or tails of it", and it "wasn't useful." Pl. 56.1 ¶¶ 124-125. MHA also explained that that because there was an assessment freeze in place at the time the 2013 and 2014 ASIE data was sought, the ASIE data would never have been useful in any County-wide reassessment because it was too dated. Pl. 56.1 ¶¶ 110, 113.

B. Procedural History

The case was commenced on April 11, 2017. DE [1]. On June 26, 2017, Defendants requested leave to file a motion to dismiss. DE [22]. On July 7, 2017, the Court granted Defendant's request and set a briefing schedule. DE [26]. On January 25, 2018, following oral argument, Defendants' motion to dismiss was denied. DE [35].

***5** Defendants filed their Answer on February 22, 2018. DE [44]. An initial conference was held on February 15, 2018, and a discovery schedule was

issued. See DE [42], [43].[1] Following numerous discovery extensions and much discovery motion practice, on February 9, 2022, all parties requested a pre-motion conference for leave to move for summary judgment. DE [156], [157]. A conference was held on April 21, 2022, and a summary judgment briefing schedule was issued. DE [167]. After many extensions of the briefing schedule, the motions were finally filed on December 1, 2023. DE [208], [211]. On April 19, 2024, the motions were referred to the undersigned for report and recommendation. Electronic Order Referring Motion dated 04/19/2024.

II. The Motion for Summary Judgment

Plaintiff seeks summary judgment asserting that the ASIE Law is unconstitutional. Plaintiff argues that the ASIE Law runs afoul of the Excessive Fines Clause of the Eighth Amendment of the United States Constitution as the penalties it imposes are punitive in nature and grossly disproportional to the gravity of the offense. Plaintiff further argues that the ASIE Law violates both the procedural and substantive components of the Due Process Clause found in the Fourteenth Amendment and seeks a declaration that the ASIE Law is unconstitutional both on its face and as applied to Plaintiff and an injunction against the enforcement of the ASIE Law.

[1] The case was subsequently transferred to the undersigned on November 22, 2021.

Defendants maintain that Plaintiff's facial and as applied challenge under the Eighth Amendment of the Unities States Constitution fails because the Excessive Fines Clause has not been held by the Supreme County to apply to an entity, rather it applies only to individuals. Defendants further argue that the fines are not excessive nor disproportionate as the fines are just a fraction of the value of the property as assessed at the time of the violation. With respect to the procedural due process claim, Defendants contend that the ASIE Law itself as well as the rules promulgated pursuant to the ASIE Law provide sufficient and adequate due process. They further argue that to the extent that Plaintiff claims it did not receive notice of imposition of the penalties in 2013 and 2014, Plaintiff concedes it received notice in 2016 of the penalties and the opportunity to pay a reduced amount, but elected to proceed with an Article 78 procedure, which Defendants maintain satisfies procedural due process. Finally, Defendants argue that Plaintiff's facial challenge to the substantive component of the Due Process Clause fails because Plaintiff has failed to show that the ASIE Law is not rationally related to the County's obligation to assess real property for taxation purposes. Defendants assert that law must be analyzed not in hindsight, but at the time of its enactment.

Having summarized the facts and the parties' positions the Court turns to the merits of the motions.

DISCUSSION

I. Legal Principles: Standards on Summary Judgment

Summary judgment is appropriately granted only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "An issue of fact is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. SCR Joint Venture L.P. v. Warshawsky, 559 F.3d 133, 137 (2d Cir. 2009). A fact is "material" if it might affect the outcome of the litigation under the relevant law. Id. The party moving for summary judgment is first responsible for demonstrating the absence of any genuine issue of material fact. Celotex, 477 U.S. at 322. Summary judgment is appropriate when the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Abramson v. Pataki, 278 F.3d 93, 101 (2d Cir. 2002) (quoting Celotex, 477 U.S. at 322).

***6** In deciding a motion for summary judgment, the Court must "resolve all ambiguities and draw all reasonable inferences against the moving party". Tolbert v. Smith, 2015 WL 3875237 *4 (2d Cir. 2015); see Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, in opposing a

motion for summary judgment, the non-moving party may not rely on unsupported assertions, conjecture or surmise, Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995), and must do more than show that there is "some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. Instead, the non-moving party must "set forth significant, probative evidence on which a reasonable fact-finder could decide" in her favor. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 256–57 (1986).

In addition, "[a]ffidavits submitted to defeat summary judgment must be admissible themselves or must contain evidence that will be presented in an admissible form at trial." Santos v. Murdock, 243 F.3d 681, 683 (2d Cir. 2001); see also Fed. R. Evid. 802; Fed. R. Civ. P. 56(e).

II. The Constitutional Claims

Plaintiff challenges the ASIE Law pursuant to the Eighth and Fourteenth Amendments of the Constitution. At this stage of the litigation, Plaintiff's claims are lacking.

A. Excessive Fines Clause

The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The protections of the Excessive Fines Clause are incorporated under the Fourteenth Amendment and applicable to the

states. Timbs v. Indiana, 586 U.S. 146, 149, 139 S. Ct. 682, 686-87, 203 L. Ed. 2d 11 (2019). The Eighth Amendment's Excessive Fines Clause "guards against abuses of government's punitive or criminal-law-enforcement authority," Timbs, 586 U.S. at 149, and "limit[s] the ability of the sovereign to use its prosecutorial power, including the power to collect fines, for improper ends," Browning–Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 266, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989).

Defendants assert that Plaintiff is not entitled to Eighth Amendment protections from excessive fines because it is not a person. Defendants' Amended Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment Dismissing the Complaint ("Def. Memo."), DE [212], at p. 22-23.[2] The United States Supreme Court has declined to rule on whether the Excessive Fines Clause applies to entities as opposed to individuals, stating that it would "[not] decide whether the Eighth Amendment protects corporations as well as individuals." Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 276 n.22 (1989). The Second Circuit has been equally silent on the matter. Therefore, out of an abundance of caution, for the purposes of this motion, the Court assumes that

[2] For ease of reference, page numbers referenced herein are numbers assigned to pages on electronically filed documents, and not to the underlying documents themselves except for page numbers referenced in cases.

entities are afforded the same Eighth Amendment protections from excessive fines as individuals and evaluates whether the fine is excessive under the Eighth Amendment.

Courts apply a two-step inquiry to determine whether a financial penalty is excessive under the Eighth Amendment. United States v. Viloski, 814 F.3d 104, 108-09 (2d Cir. 2016). First, courts consider whether the fine is punitive in nature and therefore falls within the Eighth Amendment's purview. Id. at 109. The Excessive Fines Clause applies where a fine "may be characterized, at least in part, as 'punitive,' " meaning that one of the goals is "to punish" the individual. Id. This protection applies to both criminal and civil proceedings. United States v. Sabhnani, 599 F.3d 215, 263 n. 19 (2d Cir. 2010). If the fine is punitive, the Court proceeds to consider whether the fine is unconstitutionally excessive. Viloski, 814 F.3d at 109.

***7** In evaluating the purpose of a fine, deterrence "has traditionally been viewed as a goal of punishment," in contrast to payments that "serve the remedial purpose of compensating the Government for a loss." United States v. Bajakajian, 524 U.S. 321, 329, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). "[A] civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." Austin v. United States, 509 U.S. 602, 610 (1993) (quotation marks omitted); see also Timbs, 139

S. Ct. at 689 (fines may serve "the penal goals of retribution and deterrence ....") (quotation marks omitted); Viloski, 814 F.3d at 109 (distinguishing "punitive" fines from "purely 'remedial' forfeitures ...."); von Hofe v. United States, 492 F.3d 175, 182 (2d Cir. 2007) (a penalty falls within the Excessive Fines clause if its goal is to "deter and punish" the payer).

If a fine is punitive in nature, a court then considers whether it is unconstitutionally excessive. Viloski, 814 F.3d at 109. "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." Bajakajian, 524 U.S. at 334.

Here, it is conceded that the purpose of the fine imposed by the ASIE Law is to encourage compliance with the law and to punish those who fail to comply. Def. Memo. at p. 24. Thus, the fines are at least in part a penalty for non-compliance for purposes of the Eighth Amendment analysis. Therefore, the Court moves to the second step of the inquiry.

A fine "violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." Bajakajian, 524 U.S. at 334. "[J]udgments about the appropriate punishment for an offense belong in the first instance to the legislature," and "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." Id. at 336. A court "must compare the

amount of the forfeiture to the gravity of the defendant's offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." Id. at 336-37.

Applying Bajakajian, the Second Circuit has adopted a four-factor test that guides the proportionality analysis. Viloski, 814 F.3d at 110. Courts should weigh:

> (1) the essence of the crime of the defendant and its relation to other criminal activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum sentence and fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct.

Id. (quoting United States v. George, 779 F.3d 113, 122 (2d Cir. 2015)). These factors are not exhaustive and should not be treated as a "rigid test" of a fine's proportionality. Id. at 110-11. For example, courts should not consider a penalized party's personal characteristics – such as age, health or present finances – but they may consider whether the fine would deprive the party of his or her livelihood. Id. at 115-16. These factors are not exhaustive. See Viloski, 814 F.3d at 110–11.

Applying the four factors set out by the Second Circuit, the Court concludes that no reasonable fact finder could conclude that the Plaintiff's fines were grossly disproportional to the gravity of the underlying violations, namely, not submitting the ASIE Statements.

Factor 1: The essence of the violation and its relationship to other prohibited activity. Here, the ASIE Law was designed to improve compliance by amending the penalty for failure to file the ASIE Statement to provide that an owner who failed to timely comply with the ASIE Law would be penalized in an amount not to excess one quarter percent of the fair market value of the income producing property. Defs. 56.1 ¶ 15. If the non-compliance was not remedied by September 30th, the penalty would be increased by an amount not to exceed one half of one percent of the fair market value of the income producing property. Id. If the owner continued to fail to file, a penalty of up to three quarters of one percent of the market value of the property would be imposed for each year that the owner failed to file. Id. Based on the formula, Plaintiff was assessed an initial fine of $1,900,818.00 based off one quarter of one percent of the fair market value of the Roosevelt Field Mall property and increased to nearly $4.8 million because of Plaintiff's continued non-compliance. Plaintiff did not provide the ASIE Statement for its Roosevelt Field property for 2013 and 2014. The essence of the offense is that Plaintiff failed to provide ASIE Statements which deprived Defendants of information it intended to use in performing a future reassessment of

commercial properties in Nassau County.

*8 Factor 2: Whether Plaintiff fits into the class of persons for whom the violation fees were principally designed. There is no dispute that as the property owner, Plaintiff falls into the class of persons for whom the violation fees were designed.

Factor 3: The maximum fine that could have been imposed. Here, the ASIE Law was designed to improve compliance by amending the penalty for failure to file the ASIE Statement to provide that an owner who failed to timely comply with the ASIE Law would be penalized in an amount not to excess one quarter percent of the fair market value of the income producing property. Defs. 56.1 ¶ 15. If the non-compliance was not remedied by September 30th, the penalty would be increased by an amount not to exceed one half of one percent of the fair market value of the income producing property. Id. If the owner continued to fail to file, a penalty of up to three quarters of one percent of the market value of the property would be imposed for each year that the owner failed to file. Id. Based on the formula, Plaintiff was assessed an initial fine of $1,900,818.00 based off one quarter of one percent of the fair market value of the Roosevelt Field Mall property and increased to nearly $4.8 million dollars because of Plaintiff's continued non-compliance.

The maximum fine that could be imposed is bounded by the "fair market value" of the property. The fact that the penalty is a percentage that increases the

longer the non-compliance continues, which has the potential to increase into a significant amount of money, with enforcement by steps including foreclosure, indicates the gravity of the non-compliance with the ASIE regulations and the importance of compliance to the Defendants. Here, the regulations setting forth the maximum fine that could be enforced as well as the schematics for enforcing such fines, weighs heavily in Defendants' favor.

Factor 4: The nature of harm caused by Plaintiff's conduct. Defendants have emphasized that the ASIE Law was enacted to help the County improve its overall assessment function by assisting the DOA to develop a complete database of income and expense statement for income producing properties so as to allow the DOA to provide more accurate assessments, enhance the department's modeling capabilities, determine trends, identify outliers, track more effectively changes to income producing properties as they occur, and decrease and minimize the burden of the County having to pay refunds for inaccurate assessments. See Def. Memo. at p. 26. The fact that an outside vendor did not utilize the data has no effect on the nature of the harm caused by Plaintiff's failure to provide the data. The goal of the law was for the Assessor to maintain an accurate assessment roll, which in turn benefits all commercial taxpayers by allowing for accurate assessments of their properties. Failing to provide such data has the potential to harm other commercial taxpayers because it could result in the Plaintiff's under assessment, and therefore increase other commercial taxpayer's assessments.

Therefore, the harm is not minimal nor minor. It is the County's responsibility to accurately assess taxpayers. As one of Nassau County's largest taxpayers, Plaintiff's failure to provide the information has the potential to damage the County's ability to perform accurate assessments.

***9** Applying the Bajakajian factors, the Court concludes that no reasonable fact finder could conclude that Plaintiff's initial $1,900,818.00 and ultimate nearly $4.8 million dollar fine was "grossly disproportional" to the underlying violation, given that the fine is a percentage of the fair market value of the property. See Bajakajian, 524 U.S. at 336-37. Indeed, the fine is modest given the size of the Plaintiff's property and Plaintiff's non-compliance with a law known to be in effect for two years at the time of the fine, during which time Plaintiff was fully-operational and functioning. As such, the ASIE Law is not an excessive fine within the meaning of the Eighth Amendment.

B. Due Process Claim

The Due Process Clause of the Fourteenth Amendment prohibits a state from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Fourteenth Amendment's Due Process Clause contains both a procedural component and a substantive component. Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990). The procedural component applies where there is an alleged deprivation by

government action of a constitutionally protected interest without sufficient procedural safeguards. Id. The substantive component " 'bar[s] certain government actions regardless of the fairness of the procedures used to implement them[ ]' ... [where] 'the government's exercise of power [is] without any reasonable justification in the service of a legitimate governmental objective.' " See Hurd v. Fredenburgh, 984 F.3d 1075, 1087 (2d Cir. 2021) (first quoting Southerland v. City of New York, 680 F.3d 127, 151 (2d Cir. 2012), and then quoting County of Sacramento v. Lewis, 523 U.S. 833, 840, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)). Plaintiff alleges that the ASIE Law violates both the procedural and substantive components of the Due Process Clause found in the Fourteenth Amendment. The Court first turns to Plaintiff's procedural due process claim.

1. Procedural Due Process

"[G]overnment action depriving a person of life, liberty, or property ... must ... be implemented in a fair manner." Tsirelman v. Daines, 19 F. Supp. 3d 438, 448 (E.D.N.Y. 2014) (quoting United States v. Salerno, 481 U.S.739, at 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)), aff'd, 794 F.3d 310 (2d Cir. 2015). The Constitution ordinarily imposes constraints on such government action, often in the form of notice and a pre-deprivation hearing. See Dean v. Town of Hempstead, 527 F. Supp. 3d 347, 427 (E.D.N.Y. 2021). "This requirement has traditionally been referred to as 'procedural due process.' " Tsirelman, 19 F. Supp. 3d at 448 (quoting Salerno, 481 U.S. at 746, 107 S. Ct.

2095).

In analyzing a procedural due process claim, "a court first asks 'whether there exists a liberty or property interest of which a person has been deprived,' and if so, 'whether the procedures followed by the State were constitutionally sufficient.' " Dean, 527 F. Supp. 3d at 428 (quoting Victory v. Pataki, 814 F.3d 47, 59 (2d Cir. 2016)). In general, to determine whether there have been sufficient procedural protections, "courts rely on the test in Mathews v. Eldridge, weighing: (1) 'the private interest that will be affected by the official action;' (2) 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards'; and (3) 'the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.' " See Tsirelman, 19 F. Supp. 3d at 448 (quoting Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

***10** Plaintiff argues that because of its non-receipt of the initial 2013 and 2014 notice of the penalties and the opportunity to cure, its due process rights were violated. However, Plaintiff was aware of the ASIE Law and its requirements, and intentionally did not file the ASIE Statements. Further, Plaintiff did receive notice that the penalties had been imposed when it received the December 2016 Penalty Notices. In response to the Penalty Notices, and as part of the Complaint in this action, Plaintiff commenced an

Article 78 proceeding based inter alia, lack of notice and an opportunity to be heard. The fact that Plaintiff has exercised its remedy under Article 78 before it has suffered any deprivation at all is adequate to protect its due process rights. See N.Y. State Nat'l Org. for Women v. Pataki, 261 F.3d 156, 168 (2d Cir. 2001) ("[A] procedural due process violation cannot have occurred when the governmental actor provides apparently adequate procedural remedies and the plaintiff has not availed himself of those remedies.") (quoting Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000)); see also Chase Grp. All. LLC v. City of N.Y. Dep't of Fin., 620 F.3d 146, 153 (2d Cir. 2010) ("[In evaluating] claims alleg[ing] procedural due process violations, [courts] ... evaluate whether state remedies exist because that inquiry goes to whether a constitutional violation has occurred at all." (quoting Rivera–Powell v. New York City Bd. of Elections, 470 F.3d 458, 468 n. 12 (2d Cir. 2006))).

Plaintiff argues that the DOA's mailing process for the notices is inadequate and raises it as a critical issue concerning its due process claim. However, whether the mailing process is satisfactory, and whether Plaintiff received the notices, while factual disputes, are not genuine issue regarding material facts because, regardless of the answer, the availability of the Article 78 proceeding provides Plaintiff with due process when the Matthews balancing test is applied. See Rivera–Powell, 470 F.3d at 466.

As explained in Rivera-Powell,

> Ultimately, however, the question of how to classify the Board's action is immaterial, and so we do not decide it. If we were to determine that the Board's conduct was random and unauthorized, bringing it within [Hellenic Am. Neighborhood Action Comm. v. City of N.Y. ("*HANAC*"), 101 F.3d 877 (2d Cir. 1996)], the existence of a meaningful post-deprivation remedy (which New York has provided in this case, as we discuss below) would automatically satisfy procedural due process. *See HANAC,* 101 F.3d at 880. If, on the other hand, we were to find that the Board's decision was part of an established state procedure, such that the availability of a post-deprivation remedy would not *automatically* satisfy due process, we would merely go on to determine what process was due. *See Locurto v. Safir,* 264 F.3d 154, 172 (2d Cir. 2001).

470 F.3d at 466.

The Rivera-Powell court applied the Matthews balancing tests and concluded that the availability of the State Court procedure was adequate. See Rivera-Powell, 470 F.3d at 466-67. Here, as Plaintiff was aware of the law, received the December 2016 Penalty

Notices, and has exercised its remedy under Article 78 before it has suffered any deprivation, the Article 78 proceeding is adequate to protect its due process rights. Accordingly, this Court respectfully recommends that Plaintiff's procedural due process be dismissed.

2. Substantive Due Process

To state a substantive due process claim, Plaintiff must allege that (1) it had a "valid property interest" and that (2) Defendant "infringed on that property right in an arbitrary or irrational manner." Cine SK8, Inc. v. Town of Henrietta, 507 F.3d 778, 784 (2d Cir. 2007). "Substantive due process requires only that economic legislation be supported by a legitimate legislative purpose furthered by a rational means." In re Chateaugay Corp., 53 F.3d 478, 486-87 (2d Cir. 1995) (internal quotation marks omitted). "Substantive due process rights safeguard persons against the government's exercise of power without any reasonable justification in the service of a legitimate governmental objective." Southerland v. City of New York, 680 F.3d 127, 151 (2d Cir. 2012) (internal quotation marks and citation omitted). To analyze a claim under substantive due process, courts perform a two-step analysis. Hurd v. Fredenburgh, 984 F.3d 1075, 1087 (2d Cir. 2021).

***11** "The first step in substantive due process analysis is to identify the constitutional right at stake." Kaluczky v. City of White Plains, 57 F.3d 202, 211 (2d Cir. 1995). Not all rights are entitled to protection.

Only rights that are fundamental or implicit in the concept of ordered liberty are accorded protection under substantive due process. See generally Washington v. Glucksberg, 521 U.S. 702, 720-21, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); Hurd, 984 F.3d at 1088. Next, the Plaintiff "must demonstrate that the state action was so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." Southerland, 680 F.3d at 151.

When a right is "fundamental," governmental regulation must be "narrowly tailored to serve a compelling state interest." Reno v. Flores, 507 U.S. 292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). Rights are fundamental in the substantive due process framework when they are "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325–26, 58 S. Ct. 149, 82 L. Ed. 288 (1937), or "deeply rooted in this Nation's history and tradition." Moore v. East Cleveland, 431 U.S. 494, 503, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977).

"Legislative acts that do not interfere with fundamental rights or single out suspect classifications carry with them a strong presumption of constitutionality." Beatie v. City of New York, 123 F.3d 707, 711 (2d Cir. 1997). A court may "invalidate such a law on substantive due process grounds only when a plaintiff can demonstrate that there is no rational relationship between the legislation and a legitimate legislative purpose." Id. "[W]hen reviewing challenged social legislation, a court must look for 'plausible reasons' for legislative action, whether or

not such reasons underlay the legislature's action." Id. at 712 (citing United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 179, 101 S. Ct. 453, 66 L. Ed. 2d 368 (1980)). "The due process clause 'is not a guarantee against incorrect or ill-advised government decisions.' " Interport Pilots Agency v. Sammis, 14 F.3d 133, 144 (2d Cir. 1994) (quoting Bishop v. Wood, 426 U.S. 341, 350, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976)).

Plaintiff argues that the imposition of increasing monetary penalties for non-compliance with the ASIE Law for 2013 and 2014 amounts to an irrational and unconstitutional exercise of Defendants' authority. To support its claim, Plaintiff sets forth that the ASIE data was ultimately never used in the County's reassessment. Plaintiff does not claim to be members of a "suspect" or "quasi-suspect class." Legislation that imposes monetary fines for non-compliance does not implicate a fundamental right. Accordingly, the Court applies rational basis scrutiny to the ASIE Law.

The Supreme Court has held that, "[w]here there was evidence before the legislature reasonably supporting the classification, litigants may not procure invalidation of the legislation merely by tendering evidence in court that the legislature was mistaken." Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981). In Clover Leaf Creamery, the Court held that there was a rational basis for a statute that banned the retail sale of milk in plastic nonrefillable cartons, but that permitted the sale in paperboard nonrefillable

cartons, for environmental reasons. Id. at 470, 101 S. Ct. 715. Addressing evidence that suggested paperboard cartons were in fact more harmful to the environment than plastic cartons, the Court found that it was irrelevant "[w]hether *in fact* the Act will promote more environmentally desirable milk packaging," because the legislature "*could rationally have decided* that its ban on plastic nonreturnable milk jugs might foster greater use of environmentally desirable alternatives." Id. at 466, 101 S. Ct. 715.

***12** The Second Circuit has not invalidated a statute as irrational based on changed circumstances. And, in contrast to some circuit courts, the Second Circuit has not expressly embraced the view that changed circumstances may be considered as part of a rational basis review. In accordance with the Supreme Court's holding in Clover Leaf Creamery, the Second Circuit has consistently held that a statute may not be invalidated because there is evidence that the legislature was mistaken. See, e.g., Buss. for a Better N.Y. v. Angello, 341 F. App'x 701, 704 (2d Cir. 2009) ("[W]hether *in fact* the [challenged statute] will accomplish its objectives is not the question: the Equal Protection Clause is satisfied if we conclude that the [state] Legislature *rationally could have believed that* the [action] would promote its objective." (quoting W. & S. Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 671–72, 101 S. Ct. 2070, 68 L.Ed.2d 514 (1981))).

Here, the stated legislative purpose was to enhance the County's data in order to arrive at a more accurate

assessment roll. While the tax roll had been frozen at the time of the ASIE Law's enactment, no one knew how long that freeze would remain. Further, at the time of its enactment, no one knew that five years later, a new County Executive would be elected and hire an outside vendor to conduct a complete reassessment of all real property. At the time of the ASIE Law's enactment, Defendants anticipated that the data derived from the ASIE Statement would be used for reassessment. The Legislature had a rational basis for determining that compliance under the Prior Law was inadequate for the County's purposes and needed updated legislation.

Additionally, assuming arguendo that Defendants' motivation behind the ASIE Law was revenue generation, courts have found that revenue generation is a rational and legitimate governmental goal. See Leder v. Am. Traffic Sols., Inc., 81 F. Supp. 3d 211, 225 (E.D.N.Y. 2015) (rejecting argument that red light camera law violated substantive due process based on alleged money raising motivation.). Defendants' imposition of increasing fines for failure to comply with a law is neither conscience-shocking nor a gross abuse of government authority.

Because no fundamental right was infringed, and because the ASIE law bears a rational relationship to a legitimate government purpose, no reasonable fact finder could conclude that Defendants violated Plaintiff's substantive due process rights. Accordingly, it is respectfully recommended that Plaintiff's substantive due process claims be

dismissed.

III. State Law Claims

Having disposed of Plaintiff's federal claims, the Court recommends that the District Court decline to exercise supplemental jurisdiction over Plaintiff's claims arising under New York state law. See 28 U.S.C. § 1367(c)(3). Where "federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." Valencia ex rel. Franco v. Lee, 316 F.3d 299, 305 (2d Cir. 2003) (internal citation omitted); see also Marcus v. AT&T Corp., 138 F.3d 46, 57 (2d Cir. 1998) ("In general, where the federal claims are dismissed before trial the state claims should be dismissed as well."). Accordingly, this Court respectfully recommends that the Court decline to exercise supplemental jurisdiction over Plaintiff's state law claims, and dismiss them without prejudice, pursuant to 28 U.S.C. § 1367(c)(3).

CONCLUSION

For the foregoing reasons, this Court respectfully recommends that Defendants' motion for summary judgment, appearing as Docket Entry No. 211 herein be granted, and Plaintiff's motion for summary judgment appearing as Docket Entry No. 208 be

denied, and the case dismissed in its entirety.

OBJECTIONS

***13** A copy of this Report and Recommendation is being provided to all counsel via ECF. Any written objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of filing of this report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Any requests for an extension of time for filing objections must be directed to the District Judge assigned to this action prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections within fourteen (14) days will preclude further review of this report and recommendation either by the District Court or Court of Appeals. Thomas v. Arn, 474 U.S. 140, 145 (1985) ("[A] party shall file objections with the district court or else waive right to appeal."); Caidor v. Onondaga Cnty., 517 F.3d 601, 604 (2d Cir. 2008) ("[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision").

2013 ASIE Law

LOCAL LAW 8 -2013

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMNISTRATIVE CODE TO REQUIRE THE ANNUAL PRODUCTION OF INCOME AND EXPENSE STAITMENTS BY [NCOME PRODUCING PROPERTY OWNERS AND TO AMEND THE CIVIL PENALTY ASSOCIATED WIITA THE FAILURE TO PROVIDE INCOME AND EXPENSE STATEMENTS AS REQUIRED

Passed by the Nassau County Legislature on December 19, 2013.

Became a law on December 27, 2013 with the approval of the County Executive.

BE IT ENACTED, by the County Legislature of the County of Nassau as follows:

Section 1. §6-30 of the Nassau County Administrative Code is deleted in its entirety and replaced with the following:

§ 6-30.0 **Requirement to furnish income & expense statements**.

a. For the purposes of this section, "income producing property" means real property used for but not limited to commercial, industrial, utility, and residential purposes, but excludes

residential property containing three dwelling units or less and class two properties as defined by subdivision I of section 1802 of the Real Property Tax Law.

b. Where real properly is an income-producing property, the owner shall be required to submit annually to the Department or Assessment not later than the first day of April a statement of all income derived from and all expenses attributable to the operation of such property. All such statements shall be filed as follows:

(l) Where the owner's books and records reflecting the operation of the property are maintained on a calendar year basis, the statement shall be for the calendar year preceding the date the statement shall be filed.

(2) Where the owner's books and records reflecting the operation of the property are maintained on a fiscal year basis for federal income tax purposes, the statement shall be for the last fiscal year concluded as of the first day of March preceding the date the statement shall be filed.

(3) Notwithstanding the provisions of paragraphs one and two of this subdivision, where the owner of the property has not operated the property and is without

knowledge of the income and expenses of the operation of the property for a consecutive twelve month period concluded as of the first day of March preceding the date the statement shall be filed, then the statement shall be for the period of ownership, and shall include, if applicable, the sale price and the identity of the grantor(s).

(4) The Assessor may for good cause extend the time for filing an income and expense statement by a period not to exceed sixty days.

c. Such statement shall contain the following declaration, signed by the Owner of the income producing property or a certified public accountant: "l certify that all information contained in this statement is true and correct to the best of my knowledge and belief. I understand that the willful making of false statement of material fact herein will subject me to the provisions of law relevant to the making and filing of false instruments and will render this statement null and void."

d. The form on which such statement shall be submitted shall be prepared by the Assessor and copies of such form shall be made available at the offices of the Department of Assessment and on the official website of Nassau County. The statement may require

rent rolls, lease information, contamination reports, and any other information relevant to the operation of the property as shall be prescribed by the Assessor, and may include such additional information as may seem relevant to the owner, and shall be submitted as prescribed by the Assessor. The Assessor shall, by rule, require such statement be submitted electronically in such form and such manner as the Assessor may determine. For good cause, the Assessor may waive any rule requiring electronic filing and may permit a statement to be filed in such other manner as the Assessor may designate.

e. A request for waiver of the electronic filing requirement must be made in writing no later than thirty (30) days prior to the deadline for filing an income and expense statement. Any filing in paper format must be filed with the Department of Assessment at such address as may be designated by the Assessor.

f. In the event that an owner of an income-producing property fails to file an income and expense statement within the time prescribed in subdivision b of this section (determined with regard to any extension of time for filing), such owner shall be subject to a penalty in the amount not to exceed one quarter of one percent (.25%) of the fair market value of such income-producing property as such value is determined by the Assessor for the current

fiscal year provided, however, that if such statement is not filed by the thirtieth day of September, the penalty shall-be in an amount not to exceed one half of one percent (.5%) of such fair market value. If in the year immediately following the year in which an owner of an income producing property fails to file by the thirtieth of September the owner again fails to file the income and expense statement within the time prescribed by subdivision b of this section (determined with regard to any extension of time for filing), such owner shall be subject to a penalty in an amount not to exceed three quarters Of one percent (.75%) of the fair market value of such income-producing property as determined by the Assessor for the current fiscal year. Such owner shall also be subject to a penalty of up to three quarters of one percent (.75%) of the fair market value in any year immediately succeeding a year in which a penalty of up to three quarters of one percent (.75%) of the fair market value could have been imposed, if in such succeeding year the owner fails to file an income and expense statement within the time prescribed in subdivision b of this section (determined with regard to any extension of time for filing). The penalties prescribed in this paragraph shall be determined by the Assessor or his designee after notice and an opportunity to be heard.

g. Notwithstanding the submission of an income and expense statement, for the purposes of this section, the following shall constitute a failure to file an income and expense statement for the purposes of this section:

(l) failure to file in the electronic format prepared by the Department of Assessment, or, in the event that the electronic filing requirement is waived by the Assessor, failure to use the forms prepared by the Department of Assessment;

(2) failure to complete forms in a legible manner;

(3) failure to file a substantially complete and accurate income and expense statement which shall include but shall not be limited to:

i. failure to provide data for the appropriate accounting period; and

ii. failure to provide a complete, accurate, and itemized list of income and expense data.

h. Except in accordance with a proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the County, any person engaged or retained by County on an independent contract basis, or any person, who, pursuant to this section, is

permitted to inspect any income and expense statement or to whom a copy, an abstract or a portion of any such statement is furnished, to divulge or make known in any manner except as provided in this subdivision, the amount of income and/or expense or any particulars set forth or disclosed in any such statement required under this section. The Assessor, the Assessment Review Commission, or any commissioner or officer or employee of County charged with the custody of such statements shall not be permitted or required to produce any income and expense statement or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County. Nothing herein shall be construed to prohibit the delivery to an owner or his or her duly authorized representative of a certified copy of any statement filed by such owner pursuant to this section, or to prohibit the publication of statistics so classified as to prevent the identification of particular statements and the items thereof, or making known aggregate income and expense information disclosed with respect to property classified as class four as defined in article eighteen of the Real Property Tax Law without identifying information about individual leases, or the inspection by the legal representatives of the County of the statement of any owner who shall bring an action to correct the assessment. Any violation of the provisions of this subdivision shall be

punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the County, the offender shall be dismissed from office.

i. The Assessor Shall be authorized to promulgate rules and regulations necessary to effectuate the purpose of this section.

j. The penalties prescribed in this section shall be a lien on such income- producing property when entered by the Assessor in the records in which charges against the property are to be entered, and shall continue to be, until paid, a lien on property. Such lien shall be a tax lien within the meaning of section 5-24.0 of this Code and may be collected, sold, enforced or foreclosed in any manner provided by law or may be satisfied in accordance with the provisions of section thirteen hundred fifty-four of the Real Property Actions and Proceedings Law. If such penalties are not paid within thirty days from the date of entry, it shall bear interest thereon at the rate of interest applicable to such property for a delinquent tax on real property, to be calculated to the date of payment from the date of entry. The penalties prescribed in this paragraph may also be collected in an action brought against the owner of the income-producing property in a court of competent

jurisdiction. The institution of any such action shall not suspend or bar the right to pursue any other remedy provided by law for the recovery of such penalties.

k. On or before February 1st of each year, the Assessor shall mail to the owners of record of income producing properties to which the terms of this section apply, a notification of the requirements of this section, Failure to mail such notice or the failure of such owner to receive the same shall not relieve the owner of the requirements of this section and shall not prevent the enforcement of this section.

§2. Subdivision 4 and Subdivision 5 of §5-24.0 of the Nassau County Administrative Code are amended as follows:

4. The term "tax lien" includes:

(a) The right of the County to collect taxes, penalties, interest and other charges on the real property affected by such taxes for failure to pay such taxes; and

(b) The right of the County to assess penalties, and interest thereon pursuant to §6-30.0 of the Nassau County Administrative Code; and

(c) The lien against such real property for all the aforementioned items.

5. The term "sale of taxes" or "sale of a tax lien" means the sate by the County of a lien on real property as defined in subdivision 4 (c) of this section.

§3 Subsection a. of §5-10.0 of the Nassau County Administrative Code is amended as follows:

§5-10.0 Assessment roll and town receiver's warrant.

a. The consolidated tax warrant, delivered to the town receiver of taxes pursuant to six hundred seven of the charter, shall command the receiver of taxes of each town to whom the same shall be directed, to collect from the several persons and on the properties named and described in the assessment roll, the several sums mentioned therein for state, county, town and special district purposes, including penalties assessed pursuant to §6-30.0 of the Nassau County Administrative Code, unpaid water charges and assessments for the construction and repair of sidewalks shown in the statements transmitted by the supervisors of the towns to respective names of properties. Such warrant also shall command him to pay over from time to time until the return of unpaid taxes to the County Treasurer as required by section 5-23.0 of the code all moneys so collected appearing on such roll as follows:

1. To the supervisor of the town, an amount equal to the total of one-half such sum as shall have been levied for the support of the highways and bridges therein, one-half such sum as shall have been levied therein for special district purposes, all unpaid water charges and assessments for the construction and repair of sidewalks levied for such town, and one-half of all the moneys levied therein to defray any other town expenses or charges.

2. To the treasurer of the County, one-half of the Sum levied for state and county purposes

3. After the foregoing payments and installments are made the receiver of taxes shall pay to the supervisor the remaining one-half of taxes levied for all town and special district purposes and thereafter the residue of taxes collected for county and state purposes shall be paid to the County Treasurer.

§4. §5-10.1 of the Nassau County Administrative Code is amended as follows:

§5-10.1 Assessment roll and city receiver's warrant. The consolidated tax warrant delivered to the city receiver of taxes pursuant to section six hundred seven of the charter, shall command the

receiver of taxes of each city to whom the same shall be directed.

1. To collect from the several persons and on the properties named and described on the assessment roll, the several sums mentioned therein for state and county taxes, including penalties assessed pursuant to of the Nassau County Administrative Code.

2. To pay over to the County Treasurer on the fifteenth day of each month all county and state taxes, including penalties assessed pursuant to §6-30.0 of the Nassau County Administrative Code, that he has collected prior to the first day of that month.

§5. Subsection a. of §5-26.0 of the Nassau County Administrative Code is amended as follows:

§ 5-26.0 **Bill of arrears of taxes, penalties, and assessments**

a. The County Treasurer, upon the requisition of the owner, the proposed vendee under a contract of sale, a mortgagee, any person having a vested or contingent interest in any real property, or the duly authorized agent of any of the aforementioned persons, shall furnish a bill of all arrears of taxes, penalties and assessments. Such bill shall be called a bill of arrears of taxes, penalties and assessments. Such bill shall contain a

statement of the taxes, penalties assessed pursuant to §6.30.0 of the Nassau County Administrative Code and assessments which appear on the records of the County Treasurer. Such bill or arrears shall not contain village or City taxes and assessments for benefit, Upon the payment of such bill, the receipt of the County Treasurer thereon shall be conclusive evidence of such payment. The County Treasurer shall cause to be kept a duplicate account of amounts so collected.

§6. Subsection a. of §5-33.0 of the Nassau County Administrative Code is amended as follows:

§5-33.0 **Collections of taxes by sale of tax liens**.

a. The collection of every tax upon real estate and penalties assessed pursuant to §6.30.0 of the Nassau County Administrative code, including a school district tax returned by the receivers of tax as unpaid, with the interest and additions thereon, shall be enforced by a sale of the tax lien thereof unless the County Treasurer shall have brought an action pursuant to section 5-32.0 of the code. In such event, he nevertheless may sell the tax lien. Such sale shall commence on the third Tuesday of February in each year following the year for which the tax lien was obtained and shall continue until the tax lien is sold.

§7. Subsection c. of §6-40.4 of the Nassau County Administrative Code is amended as follows:

c) The final determination of the Assessment Review Commission upon applications for the correction of assessment shall be based upon a Substantive review of information provided by the applicant or otherwise obtained by the Department of Assessment and the Assessment Review Commission, which should include, but not be limited to, consideration of comparable sales, available appraisals and/or income and expense statements, and shall be rendered not later than the thirty first day of December so that the results may be considered for the tentative assessment roll for the next year and so the final assessment roll may be prepared for publication on April first. The Assessment Review Commission, or one of the designated commissioners, may continue to take testimony and render determinations on applications subsequent to April tenth. The Commissioner may reduce or make determinations on any grieved assessment with the attorney of record of such applicant or duly substituted attorney of said applicant. The Board of Assessors, upon receipt of such determination, shall correct its assessment rolls. The Receiver of Taxes of any town in which the property is situated shall issue corrected tax bills in accordance with such determination and stipulation upon receipt of the determination, stipulation or judgment

with notice of entry wherever applicable within thirty days after entry of a final determination by the Assessment Review Commission.

§8. Severability. If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership entity or circumstance directly involved in the controversy in which order or judgment shall be rendered.

§9. SEQRA Determination. It is hereby determined by the Nassau County Legislature, the lead agency, and pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 NYECL section 0101 et seq. and its implementing regulations, Part 617 of 6 NYCRR, and Section 1611 of the County Government Law of Nassau County, that this Local Law will not have a significant impact on the environment and that no further environmental review or action is required.

§10. Effective Dale. This law shall take effect immediately.

2016 Amnesty Law

LOCAL LAW 8 -2016

A LOCAL LAW TO AUTHORIZE A VOLUNTARY PARTIAL AMNESTY PROGRAM FOR INCOME PRODUCING PROPERTY OWNERS THAT ARE LIABLE TO PAY FINES PURSUANT TO THE NASSAU COUNTY ADMINISTRATIVE CODE §6-30.0

Passed by the Nassau County Legislature on November 21, 2016.

Became a law on November 23, 2016 with the approval of the County Executive.

WHEREAS, the Nassau County Administrative Code §6-30.0 requires "income producing property" owners to submit annually to the Department of Assessment a statement of all income derived and all expenses attributable to the operation of such properties; and:

WHEREAS, in the event that an owner of an income-producing property fails to file an income and expense statement within the time prescribed by the Nassau County Administrative Code §6-30.0, the owner shall be subject to a penally in the amount not to exceed one quarter of one percent (25%) of the fair market value of such income-producing property as such value is determined by the Assessor for the current fiscal year, provided, however, that if such statement is not filed by the thirtieth day of

September, the penalty shall be in an amount not to exceed one half of one percent (.5%) of such fair market value; and

WHEREAS, if in the year immediately following the year in which an owner of an income producing property fails to file by the thirtieth of September the owner again fails to file the income and expense statement within the time prescribed by the Nassau County Administrative Code §6-30.0, such owner shall be subject to a penalty in an amount not to exceed three quarters of one percent (.75%) of the fair market value of such income-producing property as determined by the Assessor for the current fiscal year; and

WHEREAS, such owner shall also be subject to a penalty of up to three quarters of one percent (35%) of the fair market value in any year immediately succeeding a year in which a penalty of up to three quarters of one percent (.75%) of the fair market value could have been imposed, if in such succeeding year the owner fails to file an income and expense Statement within the time prescribed in the Nassau County Administrative Code §6-30.0; and

WHEREAS, income-producing property owners that fail to file income and expense statements as prescribed by the Nassau County Administrative Code §6-30.0 prevent the Department of Assessment from having the best information available in the formulation of assessments, and therefore increases the error rate of the Department of Assessment; and

WHEREAS, these errors result in the successful challenge of assessments of income producing properties resulting in the need for Nassau County to pay tax certiorari refunds to income producing property owners at the expense of all Nassau County taxpayers; and

WHEREAS, the purpose of the fine included in the Nassau County Administrative Code §6-30.0 is to mitigate this inequity; and

WHEREAS, although compliance rates for the provision of income and expense statements by income producing property owners have increased dramatically since the implementation of the Nassau County Administrative Code §6-30.0, many income producing property owners have chosen to violate the law and not file these statements thus incurring liability pursuant to the Nassau County Administrative Code §6-30.0; and

WHEREAS, this Legislature now wishes to offer a partial-amnesty to income producing property owners that are liable for fines pursuant to the Nassau County Administrative Code §6-30.0 for statements due in the years 2014, 2015 and 2016, provided such property owners pay these amounts within sixty (60) days of the date of a notification from the Department of Assessment that a fine may be assessed; NOW THEREFORE

BE IT ENACTED, by the County Legislature of the County of Nassau as follows:

Section 1. §6-30.0 of the Nassau County Administrative Code is amended to include the following subdivision:

1. Income producing property owners that have failed to provide income and expense statements due in accordance with this section in the years 2014, 2015 and 2016 and that are liable for fines pursuant to subdivision f of this section shall be authorized to pay seventy- five percent (75%) of such tines in full satisfaction of all amounts for which such owners are liable pursuant to the following conditions:

l) The Department of Assessment shall notify each income producing property owner no later than January 15, 2017 by first class mail that such owner has failed to file income and expense statements as required by Nassau County Administrative Code §6-30.0, that the Department of Assessment is authorized to fine such property owner pursuant to this Section, the amount of such fine to be assessed, and the years for which such fine will be assessed.

2) Such notification shall inform the owner of the income producing property that a partial amnesty program has been authorized by Nassau County and that Nassau County will accept a payment of seventy-five percent (75%) of any such fines in full satisfaction of all amounts for which such owners are liable pursuant to Nassau

County Administrative Code §6-30.0, provided Such payment is made within sixty (60) days of the date of such notification and further provided that the owner signs an agreement, prepared by the Nassau County Attorney, that such action constitutes a final resolution of all fines due and owing and that both Nassau County and the income producing property owner waives any action that may result therefrom

3) Participation by the owners of income producing properties with the terms of this partial amnesty program is voluntary.

§2. Severability. If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership entity or circumstance directly involved in the controversy in which order or judgment shall be rendered.

§3. SEQRA Determination. It is hereby determined by the Nassau County Legislature, the

lead agency, and pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 NYECL section 0101 et seq. and its implementing regulations, Part 617 of 6 NYCRR, and Section 1611 of the County Government Law of Nassau County, that this Local Law will not have a significant impact on the environment and that no further environmental review or action is required

§4. Effective Date. This law shall take effect immediately after becoming a law.