

Plaintiff, *Pro Se*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Plaintiff,

**Vs.**

THE CITY OF TEMPE, a municipal corporation and body politic; HUGH HALLMAN, Tempe Mayor, in his official capacity and individually, and SUSAN M. HALLMAN, husband and wife; THE TEMPE CITY COUNCIL: JOEL NAVARRO, in his official capacity and individually capacity, and JANE DOE NAVARRO, husband and wife; MARK W. MITCHELL in his official capacity and individually, and JANE DOE MITCHELL, husband and wife; P. BEN ARREDONDO, in his official capacity and individually, and RUTHANN ALBRIGHTON-ARREDONDO, husband and wife; SHANA ELLIS, in her official capacity and individually capacity and individually, and JOHN DOE ELLIS, husband and wife; ONNIE SHEKERJIAN, in her official capacity and individually, and BRIAN HART SHEKERJIAN, husband and wife; and COREY D. WOODS, in his official capacity and-individually, and JANE DOE WOODS, husband and wife; JAN HORT, Tempe City Clerk, in her official capacity and individually, and GERALD J. HORT, husband and wife; CHARLIE MEYER, Tempe City Manager, in his official capacity and individually, and DEBORAH W. MEYER, husband and wife; THE CITY OF

[illegible]

1 TEMPE POLICE DEPARTMENT: THOMAS )  
 RYFF, Chief of Police, in his official capacity and )  
 2 individually, and ROSE ANN RYFF, husband and )  
 wife; NOAH JOHNSON, Lieutenant, Tempe Police )  
 3 Department, in his official capacity and individually, )  
 and JENNIFER E. STRICHEK, husband and wife; )  
 4 AARON COLOMBE, Tempe Police Officer, in his )  
 official capacity and individually, and JANE DOE )  
 5 COLOMBE, husband and wife; BIANCA )  
 6 GALLEG0, Tempe Traffic Enforcement Aide, in her )  
 official capacity and individually, and JOHN DOE )  
 7 GALLEG0, husband and wife; and KERBY RAPP, )  
 Tempe Police Project Manager, in his official )  
 8 capacity and individually, and JANE DOE RAPP, )  
 husband and wife; THE CITY OF TEMPE )  
 9 DEPARTMENT OF ENGINEERING: SHELLY SEYLER )  
 Traffic Engineer, in official capacity and-individually, )  
 10 and J. DOE SEYLER, husband and wife; THE )  
 TEMPE MUNICIPAL COURT: HON. LOURAINÉ )  
 11 C. ARKFELD, a Judge thereof, individually, and )  
 12 MICHAEL ARKFELD, husband and wife; HON. )  
 MARY JO BARSETTI, a Judge Pro-Tempore )  
 13 thereof, individually, and DAVID E. NERLAND, )  
 husband and wife; and NANCY RODRIGUEZ, )  
 14 Deputy Court Manager, individually, and JOHN )  
 DOE RODRIGUEZ, husband and wife; THE CITY )  
 15 OF TEMPE DEPARTMENT OF RISK )  
 MANAGEMENT: DAVID J. MCALLISTER, Risk )  
 16 Management Specialist, in his official capacity and )  
 individually, and JAQUELINA MCALLISTER, )  
 17 husband and wife; THE CITY OF TEMPE )  
 DEPARTMENT OF CENTRAL SERVICES: )  
 18 MICHAEL GREENE, Administrator thereof, in his )  
 official capacity and individually, and JANE DOE )  
 19 GREENE, husband and wife; ROGER )  
 20 VANDERPOOL, former Director, State of Arizona )  
 Department of Public Safety, individually, and VALERIE )  
 21 VANDERPOOL, husband and wife; JOHN S. )  
 HALIKOWSKI, Director, State of Arizona )  
 22 Department of Transportation, individually, and )  
 RUTH HALIKOWSKI, husband and wife; )  
 23 TERRY GODDARD, Attorney General, State of )  
 Arizona, individually, and MONICA GODDARD, )  
 24 husband and wife; CASEY ARNETT, a Registered )  
 Private Process Server in Maricopa County, Arizona, )  
 25 individually, and JANE DOE ARNETT, husband and )  
 wife; AAA PHOTO SAFETY, INC., an Arizona )

corporation; DAVID PICKRON, owner AAA Photo Safety, Inc., and STEPHANIE PICKRON, husband and Wife; REDFLEX HOLDINGS LTD., an Australian corporation, GRAHAM DAVIE, CEO of RHL, and and Director of Redflex Traffic Systems Inc., and JANE DOE DAVIE, husband and wife, REDFLEX TRAFFIC SYSTEMS, INC., a Delaware corporation; KAREN FINLEY, CEO of RTS, and TIMOTHY G. FINLEY, husband and wife, BILL HARPER and JANE DOE HARPER, husband and wife; MATTHEW J. DEGRAW and JANE DOE DEGRAW, husband and wife; JOE BERNARD and JANE DOE BERNARD, husband and wife; JOHN ROES I-V and SARAH ROES VI-X, individually, or husbands and wives; and BLACK and WHITE ASSOCIATIONS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES, CORPORATIONS OR OTHER LEGAL PERSONS/ENTITIES XI-XX,

Defendants.

### **PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff, for his claims against the Defendants named herein below, alleges as follows:

#### **I. JURISDICTION**

1. This court has jurisdiction under **28 USC section 1343 (a)(3)**, since Plaintiff alleges a violation of his Constitutional rights, under color of State law, pursuant to **42 U.S.C. section 1983**. This court has jurisdiction for civil RICO, pursuant to **18 U.S.C. section 1964 (a) and(c)**, **18 U.S.C. 1965 (a)** and **28 U.S.C. 1331**. This civil action arises under the laws of the United States of America. Plaintiff is alleging a violation of his rights under **Title IX of the Organized Crime Control Act of 1970**, as amended, **18 U.S.C. section 1961 et seq.** This Court has diversity jurisdiction under **28 USC 1332**. The asserted rights and interests of the Plaintiff exceed \$75,000 exclusive of interests and costs.

**II. VENUE**

2. Venue herein is proper under **18 U.S.C.A. section 1965 (a)** and **28 U.S.C.A. 1391 (b)**.  
Venue is proper in this district under **28 U.S.C.A. section 1391** because the Defendants reside and have their principal place of corporate business in this district.

**III. PARTIES**

3. Plaintiff Daniel Arthur Gutenkauf ("Mr. Gutenkauf") is a natural-born American Citizen of the United States of America, and is a private Citizen of the state of Arizona, living in Tempe, Arizona since 1978.

4. Defendant CITY OF TEMPE is a political subdivision of the STATE OF ARIZONA, and is a municipal corporation existing under and by virtue of the laws of the STATE OF ARIZONA.

5. Defendant HUGH HALLMAN ("Mayor HALLMAN") is a citizen of the United States, and is a resident of the State of Arizona. Said Defendant is current Mayor of the CITY OF TEMPE, and he is being sued in his official capacity as a member of the body politic and-in his individual capacity. All individual acts or failures to act alleged were done on behalf of the marital community, which includes his wife SUSAN M. HALLMAN.

6. Defendant JOEL NAVARRO ("Mr. NAVARRO") is a citizen of the United States, and is a resident of the State of Arizona. Said Defendant is current Vice-Mayor of the CITY OF TEMPE, and he is being sued in his official capacity as a member of the body politic and in his individual capacity. All individual acts or failures to act alleged were done on behalf of the marital community, which includes his wife JANE DOE NAVARRO.

7. Defendant P. BEN ARREDONDO ("Mr. ARREDONDO") is a citizen of the United States, and is a resident of the State of Arizona. Said Defendant was a member of the TEMPE CITY COUNCIL at the time of the events described herein, and he is being sued in his official

1 capacity as a member of the body politic and in his individual capacity. All individual acts or  
2 failures to act alleged were done on behalf of the marital community, which includes his wife  
3 RUTHANN ALBRIGHTON- ARREDONDO.

4 8. Defendant SHANA ELLIS ("Ms. ELLIS") is a citizen of the United States, and is a  
5 resident of the State of Arizona. Said Defendant is current member of the TEMPE CITY  
6 COUNCIL, and she is being sued in her official capacity as a member of the body politic and in  
7 her individual capacity. All individual acts or failures to act alleged were done on behalf of the  
8 marital community, which includes her husband JOHN DOE ELLIS.

9  
10 9. Defendant MARK W. MITCHELL ("Mr. MITCHELL") is a citizen of the United  
11 States, and is a resident of the State of Arizona. Said Defendant is current member of the  
12 TEMPE CITY COUNCIL, and he is being sued in his official capacity as a member of the body  
13 politic and in his individual capacity. All individual acts or failures to act alleged were done on  
14 behalf of the marital community, which includes his wife JANE DOE MITCHELL.

15 10. Defendant ONNIE SHEKERJIAN ("Ms. SHEKERJIAN") is a citizen of the United  
16 States, and is a resident of the State of Arizona. Said Defendant is current member of the  
17 TEMPE CITY COUNCIL, and she is being sued in her official capacity as a member of the body  
18 politic and in her individual capacity. All individual acts or failures to act alleged were done on  
19 behalf of the marital community, which includes her husband BRIAN HART SHEKERJIAN.

20 11. Defendant COREY D. WOODS ("Mr. WOODS") is a citizen of the United States,  
21 and is a resident of the State of Arizona. Said Defendant is current member of the TEMPE CITY  
22 COUNCIL, and he is being sued in his official capacity as a member of the body politic and in  
23 his individual capacity. All individual acts or failures to act alleged were done on behalf of the  
24 marital community, which includes his wife JANE DOE WOODS.

25 12. Defendant JAN HORT ("Ms. HORT") is a citizen of the United States, and is a

1 resident of the State of Arizona. Said Defendant is current Tempe City Clerk and she is being  
2 sued in her official capacity as a member of the body politic and in her individual capacity. All  
3 individual acts or failures to act alleged were done on behalf of the marital community, which  
4 includes her husband GERALD J. HORT.

5 13. Defendant CHARLIE MEYER ("Mr. MEYER") is a citizen of the United States, and  
6 is a resident of the State of Arizona. Said Defendant is current Tempe City Manager and he is  
7 being sued in his official capacity as a member of the body politic and in his individual capacity.  
8 All individual acts or failures to act alleged were done on behalf of the marital community, which  
9 includes his wife DEBORAH W. MEYER.  
10

11 14. Defendant TEMPE POLICE DEPARTMENT is an entity of the CITY OF TEMPE,  
12 and is a subdivision of the CITY OF TEMPE, a municipal corporation existing under and by  
13 virtue of the laws of the STATE OF ARIZONA.

14 15. Defendant THOMAS RYFF ("Chief RYFF") is a citizen of the United States, and is a  
15 resident of the State of Arizona. Said Defendant is Chief of Police of TEMPE POLICE  
16 DEPARTMENT, and he is being sued in his official capacity as Chief of Police and in his  
17 individual capacity. All individual acts or failures to act alleged were done on behalf of the  
18 marital community, which includes his wife ROSE ANNE RYFF.

19 16. Defendant NOAH JOHNSON ("Lt. JOHNSON") is a citizen of the United States, and  
20 is a resident of the State of Arizona. Said Defendant is a Police Officer with rank of Lieutenant  
21 in the TEMPE POLICE DEPARTMENT, and he is being sued in his official capacity as a police  
22 officer and in his individual capacity. All individual acts or failures to act alleged were done on  
23 behalf of the marital community, which includes his wife JENNIFER E. STRICHEK.  
24

25 17. Defendant AARON COLOMBE ("Officer COLOMBE") is a citizen of the United  
States, and is a resident of the State of Arizona. Said Defendant is an alleged Tempe Police

1 officer, and he is being sued in both his official capacity as a Police Officer and his individual  
2 capacity. All individual acts or failures to act alleged were done on behalf of the marital  
3 community which includes his wife, JANE DOE COLOMBE.

4 18. Defendant BIANCA GALLEGO ("Ms. GALLEGO") is a citizen of the United States,  
5 and is a resident of the State of Arizona. Said Defendant is an alleged Traffic Enforcement Aide  
6 for the Tempe Police Department and she is being sued in both her official capacity and her  
7 individual capacity. All individual acts or failures to act alleged were done on behalf of the  
8 marital community, which includes her husband, JOHN DOE GALLEGO.

9 19. Defendant SHELLY SEYLER ("Defendant SEYLER") is a citizen of the United  
10 States, and is a resident of the State of Arizona. Said Defendant is a traffic engineer for THE  
11 CITY OF TEMPE, and is being sued in both official and individual capacity. All individual acts  
12 or failures to act alleged were done on behalf of the marital community, which includes  
13 Defendant's spouse J. DOE SEYLER.

14 20. Defendant LORRAINE C. ARKFELD ("Judge ARKFELD") is a citizen of the  
15 United States, and is a resident of the State of Arizona. Said Defendant was Presiding Judge of  
16 CITY OF TEMPE/ TEMPE MUNICIPAL COURT, at the time of the events described herein,  
17 and she is being sued in her individual capacity. All individual acts or failures to act alleged were  
18 done on behalf of the marital community, which includes her husband, MICHAEL ARKFELD.

19 21. Defendant MARY JO BARSETTI ("Judge BARSETTI") is a citizen of the United  
20 States, and is a resident of the State of Arizona. Said Defendant is a Judge Pro-Tem, hired as an  
21 independent contractor by CITY OF TEMPE/ TEMPE MUNICIPAL COURT, and she is being  
22 sued in her individual capacity. All individual acts or failures to act alleged were done on behalf  
23 of the marital community, which includes her husband, DAVID E. NERLAND.

24 22. Defendant NANCY RODRIGUEZ ("Ms. RODRIGUEZ") is a citizen of the United  
25



1 States, and is a resident of the State of Arizona. Said Defendant is Deputy Court  
2 Manager for the CITY OF TEMPE/ TEMPE MUNICIPAL COURT, and she is being sued  
3 in her individual capacity. All individual acts or failures to act alleged were done on behalf of the  
4 marital community, which includes her husband, JOHN DOE RODRIGUEZ.

5 23. Defendant DAVID J. McALLISTER ("Mr. McALLISTER") is a citizen of the United  
6 States, and is a resident of the State of Arizona. Said Defendant is an alleged Risk Management  
7 Specialist for the CITY OF TEMPE, and he is being sued in his official capacity as a member of  
8 the body politic and in his individual capacity. All individual acts or failures to act alleged were  
9 done on behalf of the marital community, which includes his wife JAQUELINA McALLISTER.  
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11 24. Defendant MICHAEL GREENE ("Mr. GREENE") is a citizen of the United States,  
12 and is a resident of the State of Arizona. Said Defendant is an Administrator in the Department  
13 of Central Services for the CITY OF TEMPE. and he is being sued in his official capacity as a  
14 member of the body politic and in his individual capacity. All individual acts or failures to act  
15 alleged were done on behalf of the marital community, which includes his wife JANE DOE  
16 GREENE.

17 25. Defendant ROGER VANDERPOOL ("Mr. VANDERPOOL") is a citizen of the  
18 United States, and is a resident of the State of Arizona. Said Defendant is former Director of  
19 Arizona Department of Public Safety, and was Director of DPS at the time of the events  
20 described herein, and he is being sued in his individual capacity. All individual acts or failures to  
21 act alleged were done on behalf of the marital community, which includes his wife, VALERIE  
22 VANDERPOOL.  
23

24 26. Defendant JOHN S. HALIKOWSKI ("Mr. HALIKOWSKI") is a citizen of the  
25 United States, and is a resident of the State of Arizona. Said Defendant is current Director of  
Arizona Department of Transportation and he is being sued in his individual capacity. All



1 individual acts or failures to act alleged were done on behalf of the marital community, which  
2 includes his wife, RUTH HALIKOWSKI.

3 27. Defendant TERRY GODDARD ("Mr. GODDARD") is a citizen of the United States,  
4 and is a resident of the State of Arizona. Said Defendant is current Attorney General for the  
5 STATE OF ARIZONA and he is being sued in his individual capacity. All individual acts or  
6 failures to act alleged were done on behalf of the marital community, which includes his wife,  
7 MONICA GODDARD.

8 28. Defendant CASEY ARNETT ("Mr. ARNETT") is a citizen of the United States, and  
9 is a resident of the State of Arizona. Said Defendant is a process server for AAA Photo Safety  
10 Inc., through contract with Redflex, and acting as an officer of Maricopa County Superior Court.  
11 All individual acts or failures to act alleged were done on behalf of the marital community,  
12 which includes his wife, JANE DOE ARNETT.

13 29. Defendant DAVID PICKRON, ("Mr. PICKRON") is a citizen of the United States  
14 and is a resident of the State of Arizona. Said Defendant is owner of AAA Photo Safety, Inc.,  
15 which contracted Defendant Casey Arnett as a process server to deliver Photo Speed citations  
16 issued by Redflex and the City of Tempe. All individual acts or failures to act alleged were done  
17 on behalf of the marital community, which includes his wife, STEPHANIE PICKRON.

18 30. REDFLEX HOLDINGS LIMITED ("RHL") is an Australian Corporation with  
19 principal places of business in Australia at 31 Market Street, South Melbourne, Victoria,  
20 Australia, with its principal place of business in USA at 23751 N. 23<sup>rd</sup> Ave, Phoenix, Arizona.

21 31. GRAHAM WILLIAM DAVIE ("Mr. DAVIE") is believed to be a citizen of  
22 Australia, living in South Melbourne Australia. Said Defendant is the Chief Executive Officer of  
23 Redflex Holdings, Ltd. of Australia, and a Director of Redflex Traffic Systems Inc. in Phoenix,  
24 Arizona. All acts or failures to act alleged were done on behalf of the marital community, which  
25

1 includes his wife JANE DOE DAVIE.

2 32. Upon information and belief, Defendant REDFLEX TRAFFIC SYSTEMS, INC.,  
3 (“Redflex” or “RTS, Inc.”) is a foreign corporation with its principal place of business in  
4 Phoenix, Arizona. Redflex may be served with process by serving its registered agent, National  
5 Registered Agents, Inc., 638 N. 5<sup>th</sup> Avenue, Phoenix, Arizona 85003. Redflex is wholly owned  
6 by an Australian entity, Redflex Holdings Limited. Redflex is a Delaware corporation, with its  
7 principal place of business in Arizona. It is authorized to do business, *inter alia*, under and by  
8 virtue of the laws of the STATE OF ARIZONA. Redflex is engaged in interstate commerce  
9 across 23 States as a supplier of road safety camera systems.  
10

11 33. Defendant KAREN FINLEY (“Ms. FINLEY”) is a citizen of the United States, and is  
12 a resident of the State of Arizona. Said Defendant is President and CEO of Redflex and an  
13 Executive with Redflex Holdings Limited. She may be served with process at 23751 N. 23<sup>rd</sup>  
14 Avenue, Suite 150, Phoenix, Arizona 85085-1854. All individual acts or failures to act alleged  
15 were done on behalf of the marital community, which includes her husband, TIMOTHY G.  
16 FINLEY.

17 34. Defendant BILL HARPER (“Mr. HARPER”) is a citizen of the United States, and is  
18 a resident of the State of Arizona. Upon information and belief, said Defendant is Custodian of  
19 Records for REDFLEX TRAFFIC SYSTEMS, INC. All individual acts or failures to act alleged  
20 were done on behalf of the marital community, which includes his wife, JANE DOE HARPER.

21 35. Defendant MATTHEW J. DeGRAW (“Mr. DeGRAW”) is a citizen of the United  
22 States, and is a resident of the State of Arizona. Upon information and belief, said Defendant is  
23 an employee of REDFLEX TRAFFIC SYSTEMS, INC. All individual acts or failures to act  
24 alleged were done on behalf of the marital community, which includes his wife, JANE DOE  
25 DEGRAW.

1 36. Defendant JOE BERNARD ("Mr. BERNARD") is a citizen of the United States, and  
2 is a resident of the State of Arizona. Said Defendant is a Project Manager for REDFLEX  
3 TRAFFIC SYSTEMS, INC. All individual acts or failures to act alleged were done on behalf of  
4 the marital community, which includes his wife JANE DOE BERNARD.

5 **IV. BACKGROUND FACTS**

6 37. Upon information and belief, on July 19, 2007, the TEMPE CITY COUNCIL  
7 approved the contract for Redflex Traffic Systems, Inc., to run their photo enforcement program  
8 in the CITY OF TEMPE, Arizona.

9 38. On September 4, 2008, Plaintiff Daniel Arthur Gutenkauf received an Arizona Traffic  
10 Ticket and Complaint, through the U.S. Postal service, from the Tempe Municipal Court,  
11 certified by Tempe Police Officer AARON COLOMBE on 09/02/2008, alleging a violation of  
12 ARS 28-701A on August 19, 2008 at 200 S. Rural Rd. in Tempe, Arizona.

13 39. Plaintiff did not respond to the citation, and was given service of process of the traffic  
14 ticket on October 21, 2008, AT 4:36 pm by CASEY ARNETT, an employee of AAA Photo  
15 Safety Inc.

16 40. On February 17, 2009, Plaintiff Daniel Arthur Gutenkauf challenged a traffic citation  
17 in TEMPE MUNICIPAL COURT before MARY JO BARSETTI, Judge Pro-Tem, for an alleged  
18 violation of A.R.S.28-701 A, speed not reasonable and prudent, based on evidence gathered from  
19 a fixed speed camera operated by Defendant REDFLEX TRAFFIC SYSTEMS, INC.  
20

21 41. The testimony for the STATE OF ARIZONA was given by Traffic Enforcement Aide  
22 BIANCA GALLEGGO of the TEMPE POLICE DEPARTMENT.

23 42. Ms. GALLEGGO testified that on August 19<sup>th</sup> of 2008, at approximately 12:10 hours,  
24 the Speed Enforcement Fixed Camera at 200 South Rural Road had detected a Chevy van,  
25 bearing Arizona license plate of 386 WCD, traveling northbound at a speed of 47 miles per hour.

1 43. The posted speed limit at this location is 35 miles per hour and the enforcement timed  
2 is at 46 miles per hour, which is 11 miles per hour over the posted speed limit.

3 44. Ms. GALLEGO testified that she had reviewed this alleged traffic speeding violation  
4 via online video prior to court, and that she had received the State's exhibits from the REDFLEX  
5 Custodian of Records BILL HARPER.

6 45. Ms. GALLEGO entered into evidence STATE OF ARIZONA's exhibits #1 thru # 6.

7 46. STATE OF ARIZONA's Exhibit #1 was an enlarged picture of the front of a vehicle  
8 registered to Daniel Arthur Gutenkauf.

9 47. STATE OF ARIZONA's Exhibit #2 was the rear of the photographed vehicle  
10 showing the license plate registered with the Arizona Department Of Transportation (ADOT)  
11 Motor Vehicle Division (MVD) as belonging to Daniel Arthur Gutenkauf.

12 48. STATE OF ARIZONA's Exhibit #3 was a Scattergram, depicting all the vehicles that  
13 crossed over speed loops, plus or minus five minutes from the time of the alleged speeding  
14 violation.

15 49. STATE OF ARIZONA's Exhibit #4 was a test record of the speed detectionsystem at  
16 200 S. Rural Rd. in Tempe, dated 8/15/ of 2008, signed by REDFLEX employee  
17 MATTHEW J. DeGRAW.

18 50. STATE OF ARIZONA's Exhibit #5 was a test record of the speed detection system at  
19 200 S. Rural Rd. in Tempe, dated 9/15/2008, signed by Mr. DeGRAW.

20 51. STATE OF ARIZONA's Exhibit #6 was a copy of a photograph by REDFLEX of the  
21 front and rear of a vehicle registered with the Arizona Department of Transportation's Motor  
22 Vehicle Division to Daniel Arthur Gutenkauf, which was received by him in the mail on or  
23 about 09/04/2008.

24 52. When Judge BARSETTI asked the Daniel Gutenkauf if he had any objections to the  
25

1 State's exhibits, Mr. Gutenkauf objected that the State's records had not been authenticated or  
2 certified, and that the person who prepared the State's records is unknown and was not present to  
3 testify.

4 53. Mr. Gutenkauf stated for the record that because he could not cross-examine the  
5 (REDFLEX) records themselves, it was a violation of Due Process of Law.

6 54. Judge BARSETTI admitted the State's Exhibits #1 through #6, over Mr. Gutenkauf's  
7 objections.

8 55. Mr. Gutenkauf conducted an extensive two hour cross-examination of the State's only  
9 witness, Ms. GALLEGO.

10 56. The civil traffic complaint was initiated by a computer- generated signature of Tempe  
11 Officer COLOMBE, who was not present at the traffic hearing to give testimony.

12 57. Mr. Gutenkauf made an oral Motion to Dismiss the State's case on the ground that  
13 Officer COLOMBE, the original complainant, was not present to testify to the facts in the case,  
14 citing the Superior Court's decision in *State of Arizona v. A. Melvin McDonald*.

15 58. Judge BARSETTI denied Mr. Gutenkauf's Motion to Dismiss, stating it was not the  
16 appropriate time.

17 59. Under cross-examination, Ms. GALLEGO admitted that neither she nor Officer  
18 COLOMBE could determine from the State's Exhibits (#1 and # 6) that the driver with the  
19 sunglasses on was Daniel Arthur Gutenkauf, and not Dennis Michael Gutenkauf, since the  
20 officer/complainant and the aide/witness did not have any driver's license photo I.D. to compare  
21 to the REDFLEX photo.

22 60. Ms. GALLEGO admitted that at the time the ticket was issued, Officer COLOMBE  
23 did not make a positive identification of the driver.

24 61. Ms. GALLEGO admitted that no one compared the REDFLEX photo with the  
25

1 driver's license photo of Daniel Gutenkauf, and that the traffic citation was issued only on the  
2 basis of a Motor vehicle registration match and a gender match.

3 62. At the conclusion of cross-exam of the State's witness GALLEGO, Mr. Gutenkauf  
4 elected to give testimony and introduced a copy of his automobile insurance policy, which  
5 showed his identical twin brother, Dennis Michael Gutenkauf, as another driver also insured to  
6 drive his van.

7 63. Daniel Gutenkauf's automobile insurance policy with Traveler's Insurance was  
8 admitted into evidence as rebuttal evidence.

9 64. The State's witness, Ms. GALLEGO, did not present any evidence during the traffic  
10 hearing which positively identified Daniel Gutenkauf as the actual driver pictured in the  
11 REDFLEX photograph, alleged to have committed the traffic violation.

12 65. At the conclusion of the trial, Judge BARSETTI found Daniel Gutenkauf  
13 "Responsible" for a violation of ARS 28-701 A. and fined him \$171.00, plus an additional \$26  
14 fee for service of process.

15 66. On May 1, 2009, Mr. Gutenkauf filed a timely appeal of the decision of Judge  
16 BARSETTI.

17 67. On October 6, 2009, Maricopa County Superior Court Judge Eartha K. Washington  
18 filed her ruling, overturning the decision of the Tempe Traffic Court and ordered the refund of  
19 the \$197.00 fine.

20 68. On 12/03/2009 the City of Tempe issued a check refunding the \$197.00 fine paid by  
21 Daniel Gutenkauf.

22 **Plaintiff Filed Notice of Claim Exhausting Administrative Remedies**

23 69. On March 9, 2010, Daniel Gutenkauf filed a Notice of Claim, pursuant to A.R.S.12-  
24 820.01, with the CITY OF TEMPE for \$699.00 to recover his costs incurred in filing the appeal  
25

1 to Maricopa County Superior Court. (See **EXHIBIT A**)

2 70. On March 11, 2010, David McAllister, a purported Risk Management Specialist for  
3 the CITY OF TEMPE, telephoned Daniel Gutenkauf and informed him that the CITY OF  
4 TEMPE had accepted his offer to settle the claim for \$699.00, and Mr. McAllister had already  
5 mailed a letter of acceptance and a release form.

6 71. David McAllister did not discuss or explain any of the specific terms of the release  
7 contract with Mr. Gutenkauf during the March 11, 2010 telephone conversation.

8 72. Mr. McAllister's cover letter specified that upon return of the settlement release  
9 contract containing Daniel Gutenkauf's notarized signature, agreeing to all the expressly  
10 conditional terms of the release form, Mr. McAllister would then request authorization for a  
11 check for payment to be issued to Mr. Gutenkauf for \$699.00.

12 73. When Mr. Gutenkauf read the City of Tempe settlement release contract, he realized  
13 that there had been no genuine "meeting of the minds" to his settlement offer, because the  
14 release form contained expressly conditional terms, which were never discussed and were never  
15 agreed to by Mr. Gutenkauf, who determined that such terms of the release were  
16 "unconscionable" and heavily slanted in favor of the CITY OF TEMPE.

17 74. Daniel Gutenkauf did not sign and return the City of Tempe release form.

18 75. Approximately three weeks later, on April 5, 2010 Mr. McAllister called Daniel  
19 Gutenkauf on the telephone and stated that he had not received the signed release form, and he  
20 asked Mr. Gutenkauf if he had received the letter and release form.

21 76. Mr. Gutenkauf told Mr. McAllister that he had received the release form, but he had  
22 numerous serious objections to the terms of the release, and that there was no genuine "meeting  
23 of the minds".

24 77. Mr. Gutenkauf pointed out specific objections regarding the vagueness of various  
25



1 provisions in the “boilerplate” release form, releasing “any and all” persons, agents,  
2 corporations, “whether named herein or not”, which he interpreted to preclude him from suing  
3 REDFLEX and other Defendants, who were not employees of the CITY OF TEMPE.

4 78. In the telephone conversation on April 5, 2010, Mr. McAllister expressed the opinion  
5 that he didn’t think an Arizona court would rule that the terms of the City of Tempe’s release  
6 contract would preclude Daniel Gutenkauf from suing Redflex and its employees, thereby  
7 showing a significant disagreement in interpretation about what the terms of the release form  
8 actually meant.

9 79. Daniel Gutenkauf pointed to his alternate understanding of the terms as proof of  
10 vagueness of the release contract, and that there was no “meeting of the minds”; he informed Mr.  
11 McAllister that he was withdrawing his initial settlement offer, and that he would be sending a  
12 written notice of formal withdrawal of his initial settlement offer in the mail.

13 80. David McAllister alleged that there was an oral agreement to settle, that an oral  
14 contract could be considered binding, and he verbally threatened to sue Daniel Gutenkauf for  
15 “breach of contract” if the contract was not signed, even though Mr. Gutenkauf insisted that  
16 there was “no meeting of the minds”.  
17

18 81. During the contentious telephone discussion, Mr. McAllister attempted twice to  
19 entice and entrap Daniel Gutenkauf into admitting whether he was the driver of the vehicle  
20 alleged to have committed the speeding violation, which was overturned.

21 82. Daniel Gutenkauf took extreme umbrage with Mr. McAllister’s off- point question  
22 and intimidating attitude, and he informed Mr. McAllister that the issue of the driver’s identity  
23 was irrelevant to the discussion, and then Mr. Gutenkauf declared “This conversation is over”.  
24

25 83. In a letter dated April 6, 2010, Daniel Gutenkauf gave the CITY OF TEMPE written  
notice of withdrawal of his initial settlement offer, which included case law citations on

1 “contracts”, supporting his position that there was no contract without a “meeting of the minds”,  
2 and sent the letter via certified mail to David McAllister.

3 84. Approximately three weeks later, Daniel Gutenkauf received a letter from David  
4 McAllister, dated April 29, 2010, acknowledging receipt on April 15, 2010, of Plaintiff’s Letter  
5 of Withdrawal of Initial Settlement Offer.

6 85. Mr. McAllister’s letter of April 29, 2010, stated that the CITY OF TEMPE  
7 considered the Notice of Claim to be settled, but the letter did not contain any case law  
8 controverting Mr. Gutenkauf’s legal citations on contract law.

9 86. On May 4, 2010, Mr. Gutenkauf made a public records request from CITY OF  
10 TEMPE Human Resources Department for a certified copy of the loyalty oath of office for  
11 David McAllister.

12 87. The document which purports to be the loyalty oath for David McAllister contains no  
13 notary “jurat”, no evidence of the date when the oath was “subscribed”, no evidence of who  
14 witnessed his signature, no evidence that the oath was ever “taken,” no evidence of who  
15 administered the oath, no evidence of a date when the oath was “filed of record”; the oath is not  
16 in proper form, which reproduces all of **A.R.S. 38-231**, and it is not in affidavit form. (See  
17 **EXHIBIT B**, loyalty oath for David McAllister)

18 88. **A.R.S. 38-231 B.** provides that no public employee is entitled to any compensation  
19 without having taken and subscribed the required oath. (See **EXHIBIT C**)

20 89. **A.R.S 38-291(9)** provides that an office is automatically deemed “vacant” for failure  
21 to take the loyalty oath required under A.R.S. 38-231. (See **EXHIBIT D**)

22 90. Daniel Gutenkauf did further legal research on “contracts”, and he discovered case  
23 law which supported his position that an acceptance of an offer with terms different from the  
24 initial offer is considered a “counter-offer” and a rejection of the initial offer.  
25

1 91. Daniel Gutenkauf received a letter from CITY OF TEMPE, postmarked May 18,  
2 2010, which contained the check from CITY OF TEMPE, with the Date 05/13/2010 made out to  
3 him for the amount of six hundred ninety- nine dollars, accompanied by the first two pages of his  
4 Notice of CLAIMS AGAINST THE CITY OF TEMPE.

5 92. On May 24, 2010, Daniel Gutenkauf drafted another letter to David McAllister, citing  
6 case law on "counter-offers," rejection of counter-offers, and end of negotiations, and he  
7 returned the check for \$699.00 to David McAllister via certified mail.

8 93. In the second paragraph on page 4 of his letter, dated May 24, 2010, Daniel  
9 Gutenkauf said he believed that David McAllister had deliberately intended to mislead him  
10 regarding the meaning of the language in the City of Tempe Release contract not precluding a  
11 lawsuit against Redflex, in order to *protect* Redflex from a RICO lawsuit.

12 94. Daniel Gutenkauf has subsequently discovered that on page 14 of 29 in the "Agree-  
13 ment between the City of Tempe, Arizona and Redflex Traffic Systems Inc., for Automated  
14 Photo Speed and Photo Red Light Enforcement Program", section 8.2. specifies that:

15 INDEMNIFICATION BY CUSTOMER:

16 "the Customer (City of Tempe) agrees to defend and indemnify Redflex and  
17 its...employees...all persons acting by, through, under or in concert with them,  
18 or any of them...against, and to *protect*, save and keep harmless...arising out of  
19 or in any way related to...(b) the willful misconduct of the Customer, its  
20 employees, contractors or agents...(c) any claim, action or demand not  
21 caused by Redflex's failure to perform its obligations under this Agreement, or  
22 (d)... the validity of the Citations issued, prosecuted and collected as a result of  
23 the Customer's use of the Redflex System or any portion thereof."

24 95. Based on the language of the "INDEMNIFICATION BY CUSTOMER" clause,  
25 Section 8.2, David McAllister knowingly, deliberately, and intentionally made a false  
representation of the meaning of the terms of the City of Tempe's Release Contract in his  
telephone conversation with Daniel Gutenkauf on March 11, 2010, and Mr. McAllister intended

1 that Daniel Gutenkauf would act on that false representation by signing the Release Contract, to  
2 the detriment of his right to sue REDFLEX TRAFFIC SYSTEMS INC. and its employees.

3 96. Daniel Gutenkauf's letter of May 24, 2010, informed David McAllister that his  
4 loyalty oath was not in compliance with the requirements of **A.R.S. 38-231**, that he was illegally  
5 collecting a paycheck from the City of Tempe, that his office is legally deemed "vacant"  
6 pursuant to **A.R.S. 38-291(9)**, that he had no authority to enter into any contracts for the City of  
7 Tempe, and that any purported settlement contract was *void ab initio*.

8 97. In a letter date June 22, 2010, David McAllister again sent Daniel Gutenkauf the  
9 check from the CITY OF TEMPE for \$699.00, but significantly, his cover letter did not  
10 controvert Daniel Gutenkauf's case law on rejection of "counter-offers", nor did Mr. McAllister  
11 controvert the alleged deficiency of his loyalty oath and the "vacancy" of his office.

12 98. On July 22, 2010, Daniel Gutenkauf subsequently drafted a letter to Laura Guerrero,  
13 Manager of City of Tempe Risk Management, sent certified mail, Article Number 7010 0290  
14 002 5565 7179, detailing the chronology and substance of Daniel Gutenkauf's negotiation  
15 interactions with David McAllister, and Mr. Gutenkauf again returned the check for \$699.00  
16 back to the CITY OF TEMPE, with a restatement that no settlement agreement had been  
17 reached.

18 99. No further settlement negotiations have taken place between Daniel Gutenkauf and the  
19 CITY OF TEMPE Risk Management Department as of the date of filing this Complaint.

20 100. On April 2, 2010, Daniel Gutenkauf filed a Notice of Claim with Risk Management  
21 for the STATE OF ARIZONA, pursuant to **A.R.S. 12-820.01**, but no response was  
22 received, and the 60 days time period has passed, which is statutorily deemed a denial of the  
23 Notice of Claim. (See **EXHIBIT E**)  
24  
25

#### **V. CLAIM FOR RELIEF**

Cause of Action #1  
**DEPRIVATION OF RIGHTS UNDER COLOR STATE LAW**

**COUNT I**

**Violation of 42 U.S.C. 1983, Fourth Amendment and Fourteenth Amendment**  
**Officer Colombe's False Certification of Traffic Ticket (Perjury)**

101. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 100 as though fully set forth herein.

102. The Superior Court ruled on 10/06/2009 that "No reasonable grounds existed for Officer Colombe to issue the complaint to appellant because the procedure followed by the police department does not provide an adequate basis of determining whether a registered owner was the actual driver at the time a violation is captured by the Traffic Enforcement System." (See **EXHIBIT A**),

103. The Superior Court ruled on 10/06/2009 that "Officer Colombe had no idea what the appellant looked like and issued the ticket based on the fact that he is the registered owner of the vehicle and because the person captured in the photo was male."

104. Officer COLOMBE had a duty under **A.R.S. 38-231**, loyalty oath of office, to faithfully uphold the Constitution of the United States and the Arizona Constitution, which includes the duty to faithfully follow the provisions of **A.R.S. 28-1561**.

105. Officer COLOMBE knew or should have known that **A.R.S. 28-1561 A** required him to positively identify the actual driver of the vehicle, in order to properly certify the Arizona Traffic Ticket and Complaint issued to Daniel Gutenkauf on 9/3/2008.

106. Officer COLOMBE, acting under color of State law, **A.R.S. 701A**, and under color of authority as a Tempe police officer, acting within the scope of his employment, but acting outside the scope of his authority, knowingly, deliberately, and intentionally and with malice, violated Daniel Gutenkauf's clearly established Constitutional right to Substantive and

1 Procedural Due Process of Law, protected under the Fourteenth Amendment to the United States  
 2 Constitution, and by his malicious prosecution, Officer COLOMBE violated Plaintiff's Fourth  
 3 Amendment right, by issuing the traffic citation in the absence of probable cause, and in  
 4 "deliberate indifference" to Mr. Gutenkauf's Constitutional rights.

5 107. Officer COLOMBE breached his duty to follow the mandatory provisions of A.R.S.  
 6 28-1561, by issuing the traffic ticket to Daniel Gutenkauf based only on a gender match, without  
 7 having reasonable cause to believe that the person named in the complaint was the actual driver  
 8 who committed the violation contrary to law.

9 108. A.R.S. 28-1561 B. provides that a false certification is perjury.<sup>1</sup>

10 109. A.R.S. 28-1561, certification of the traffic complaint, was clearly established law  
 11 at the time of the events described herein, and the Fourth Amendment right, that no warrant shall  
 12 issue except upon probable cause, was clearly established law at the time of the events described  
 13 herein.

14 110. Officer COLOMBE's violation of Daniel Gutenkauf's Constitutionally protected  
 15 rights under the Fourth, Sixth, and Fourteenth Amendments to the U. S. Constitution was the  
 16 proximate cause of the financial damage to Mr. Gutenkauf, for the \$197.00 fine imposed, for the  
 17 \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript, and miscellaneous  
 18 costs of legal research for the appeal.

## 20 COUNT II

### 21 Violation of 42 U.S.C. 1983, Fourteenth Amendment 22 Officer Colombe's Failure To Respond To Court Summons

23 111. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 24

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25 1. Origin in Mosaic law "Thou shalt not bear false witness against thy neighbor." Exodus 20:16

110 as though fully set forth herein.

112. Officer COLOMBE's failure to appear in response to the Tempe Municipal Court's subpoena of the officer to appear as a witness at the traffic hearing of Daniel Arthur Gutenkauf, on February 17, 2008, deprived Mr. Gutenkauf of his Sixth Amendment right to cross-examine and confront the witness/complainant who certified the traffic ticket, and deprived him of Substantive and Procedural Due Process, and his right to fundamental fairness and a fair trial, protected by the Fourteenth Amendment to the United States Constitution.

113. Officer COLOMBE's knowing, deliberate, intentional, and malicious violation of Daniel Gutenkauf's Constitutionally protected rights under the Fourth, Sixth, and Fourteenth Amendments to the U. S. Constitution was the proximate cause of the financial damage to Mr. Gutenkauf, for the \$197.00 fine imposed, for the \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript, and miscellaneous costs of legal research for the appeal.

114. Officer COLOMBE'S actions were done "under color of state law", pursuant to A.R.S. 28-1561, A.R.S. 28-701 A. and under color of the authority of said Defendant as a Police officer for the CITY OF TEMPE and the TEMPE POLICE DEPARTMENT.

### COUNT III

#### **Violation of 42 U.S.C. 1983, Sixth Amendment, Fourteenth Amendment** **Traffic Aide GALLEGO's Appearance as Substitute Witness for OFFICER COLOMBE**

115. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 114 as though fully set forth herein.

116. Ms. GALLEGO, who appeared as the State's Witness in the traffic case, knew or should have known that Officer COLOMBE had been subpoenaed to testify at Daniel Gutenkauf's hearing, based on the Continuance document dated Jan. 22, 2020, yet she appeared as a substitute witness on Feb.17, 2010. (See **EXHIBIT G**)



1 117. Ms. GALLEGO's appearance as a substitute witness for original Complainant  
2 Officer COLOMBE on 2-17-2010, denied Daniel Gutenkauf of his *fundamental* right to confront  
3 and cross- examine the original complainant, protected by the Confrontation Clause of the Sixth  
4 Amendment, and deprived him of his right to a fair trial, which is protected by the Fourteenth  
5 Amendment to the United States Constitution.

6 118. Ms. GALLEGO knew that the State had no Driver's, license photo I.D. as evidence  
7 to match the driver to the Redflex photo, yet she knowingly and intentionally acted as a witness,  
8 in "deliberate indifference" to Daniel Gutenkauf's right to a fair trial, protected by the Due  
9 Process clause of the Fourteenth Amendment.

10 119. BIANCA GALLEGO, acting under color of State Law, **A.R.S. 701 A.**, and acting  
11 under color of authority as a Traffic Enforcement Aide for the CITY OF TEMPE, acting within  
12 the scope of her employment, but acting outside the scope of here authority, knowingly,  
13 deliberately, intentionally and with malice deprived Daniel Gutenkauf of his Constitutionally  
14 protected right to a fair trial and Due Process under the Fourteenth Amendment, and she acted in  
15 "deliberate indifference" to that right.

16 120. The right to a fair trial, protected by the Fourteenth Amendment, was clearly  
17 established law at the time Ms. GALLEGO testified at Daniel Gutenkauf's traffic hearing on  
18 Feb. 17, 2010, and she knew or should have known that failure to uphold Mr. Gutenkauf's  
19 Constitutional rights would reasonably lead to his financial loss and deprivation of his rights.

20 121. BIANCA GALLEGO's "deliberate indifference" to Daniel Gutenkauf's  
21 Constitutional right to a fair trial was the moving force in the violation of Mr. Gutenkauf's  
22 Constitutional right to Due Process of Law under the Fourteenth Amendment, and the  
23 Deprivation of his Fourth Amendment Constitutional rights under color of State law.

24 122. BIANCA GALLEGO's "deliberate indifference" to Daniel Gutenkauf's  
25

1 Constitutional rights under the Fourth, Sixth, and Fourteenth Amendments was the proximate  
 2 cause of the financial damage to Mr. Gutenkauf, for the \$197.00 fine imposed, for the \$147.00  
 3 cost of filing the appeal, for the \$485.00 cost of the trial transcript, and for miscellaneous costs of  
 4 legal research for the appeal.

#### 5 **COUNT IV**

##### 6 **Violation of 42 U.S.C. 1983, Fourteenth Amendment** 7 **Police Chief RYFF'S Failure to Train Officer COLOMBE & Traffic Aide GALLEGO**

8 123. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 9 122 as though fully set forth herein.

10 124. Tempe Police Chief THOMAS RYFF had a duty to properly instruct, train and  
 11 supervise Officer COLOMBE and Traffic Aide GALLEGO in following proper legal procedure  
 12 to issue an Arizona Traffic Ticket and Complaint, by means of personally reviewing the traffic  
 13 ticket and exhibits, and having *reasonable grounds* to believe that the person named in the traffic  
 14 ticket as the actual driver, prior to the Complainant's computer signature being printed on the  
 15 traffic ticket.

16 125. Chief RYFF's failure to properly instruct, train and supervise Officer COLOMBE  
 17 and Ms. GALLEGO in following proper legal certification procedure to issue Arizona Traffic  
 18 Ticket and Complaint, was a result of an official custom, policy or standard of the TEMPE  
 19 POLICE DEPARTMENT, set by its chief policy maker, Chief RYFF, of only making a "gender  
 20 match" with driver's motor vehicle registration information, in "deliberate indifference" to  
 21 Daniel Gutenkauf's Fourteenth Amendment right to Substantive and Procedural Due Process,  
 22 and in "deliberate Indifference" to Mr. Gutenkauf's Fourth Amendment right, which prohibits  
 23 malicious prosecution without probable cause.  
 24

25 126. Chief RYFF's actions and failure to act were done "under color of state law",

1 pursuant to A. R. S. 28-1561, A.R.S. 28-701 A., and under color of his purported authority as  
 2 Chief of Police for the TEMPE POLICE DEPARTMENT, acting within the scope of his  
 3 employment, but outside the scope of his authority.

4 127. Chief RYFF's policy of "deliberate indifference" was the moving force in the  
 5 violation of Daniel Gutenkauf's Constitutional right to Due Process of Law under the Fourteenth  
 6 Amendment, and the Deprivation of his Fourth Amendment rights, which were clearly  
 7 established law at the time of the events described herein.

8 128. Chief RYFF's policy of "deliberate indifference" was the proximate cause of the  
 9 financial damage to Daniel Gutenkauf, for the \$197.00 fine imposed, for the \$147.00 cost of  
 10 filing the appeal, for the \$485.00 cost of the trial transcript, and for miscellaneous costs of legal  
 11 research for the appeal.  
 12

### 13 COUNT V

#### 14 Violation of 42 U.S.C. 1983, Fourteenth Amendment 15 Judge BARSETTI's Ruling in Absence of Jurisdiction

16  
 17 129. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 18 128 as though fully set forth herein.

19 130. Judge BARSETTI, knew or should have known that A.R.S. 28-1561 A required The  
 20 STATE OF ARIZONA to present evidence to positively identify the actual driver of the vehicle,  
 21 in order to properly certify the Arizona Traffic Ticket and Complaint issued to Daniel Gutenkauf  
 22 on 9/3/2008.

23 131. Judge BARSETTI, knew that the STATE had NO evidence to prove that Daniel  
 24 Gutenkauf was in fact the driver of the vehicle alleged to have violated A.R.S. 28-701 A., speed  
 25 not reasonable and prudent, based on Ms. GALLEGO'S admissions under cross-exam.

1 132. Mr. Gutenkauf informed Judge BARSETTI that the appellate court (Arizona  
2 Superior Court) has consistently ruled that traffic tickets not properly certified in accordance  
3 with **A.R.S. 28-1561** fail to confer jurisdiction to the trial court.

4 133. Even though Judge BARSETTI knew that the court had no jurisdiction because  
5 failure of Officer COLOMBE to certify the traffic ticket with a “reasonable grounds” to believe  
6 that Daniel Gutenkauf was the actual driver of the vehicle, she proceeded to rule *in absence of all*  
7 *jurisdiction* in Tempe municipal court on 2-17-2010, and she knowingly, deliberately, and  
8 intentionally found Mr. Gutenkauf “responsible” for violating **A.R.S. 28-701A**, with evil intent  
9 and without “objective reasonableness”, and in spite of Mr. Gutenkauf’s motion to dismiss for  
10 lack of jurisdiction.  
11

12 134. Judge BARSETTI, acting within the scope of her employment, but acting outside  
13 the scope of her authority, knowingly, deliberately and intentionally ruled in absence of all  
14 jurisdiction, and her breach of duty, characterized by “deliberate indifference” to Daniel  
15 Gutenkauf’s Constitutional right to a fair trial and Due Process under the Fourteenth  
16 Amendment, which was clearly established law, and her arbitrary and capricious abuse of  
17 governmental power, in violation of Daniel Gutenkauf’s substantive Due Process rights, was the  
18 proximate cause of financial damage to Daniel Gutenkauf, for the \$197.00 fine imposed, for the  
19 \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript and miscellaneous  
20 costs of legal research for the appeal.  
21

## 22 COUNT VI

### 23 **Violation of 42 U.S.C. 1983, Fourth, Fifth, & Fourteenth Amendment** 24 **Judge BARSETTI I improperly shifted Burden of Proof to Defendant**

25 135. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
134 as though fully set forth herein.

1           136. Judge BARSETTI, knowingly, deliberately, with malice, and with evil intent  
2 improperly shifted the burden of proof upon Daniel Gutenkauf, requiring him to prove that he  
3 was NOT the driver of the vehicle alleged to have violated **A.R.S. 28-701 A**, contrary to the  
4 legal standard that the STATE's burden of proof shall be by a preponderance of evidence,  
5 pursuant to Rule 17(b) of Arizona Rules of Procedure for Civil Traffic and Boating Violations,  
6 and in violation of Mr. Gutenkauf's Fifth Amendment right to be presumed innocent until proven  
7 guilty.

8           137. Judge BARSETTI, acting under color of State Law, pursuant to **A.R.S 28-701 A.**,  
9 and acting under color of State Law as Judge Pro Tem, hired as a "private independent  
10 contractor" for the CITYOF TEMPE, acting within the scope of her employment, but acting  
11 outside the scope of her authority, *knowingly, deliberately, and with malice and evil intent*,  
12 deprived Daniel Gutenkauf of his Constitutionally protected right to Due Process of Law under  
13 the Fourteenth Amendment to the U.S, Constitution, by denying his right to a fair trial, causing  
14 oppression by an arbitrary and capricious abuse of governmental power, and depriving him of his  
15 Fourth Amendment right requiring probable cause to issue the traffic complaint, and depriving  
16 him of his Fifth Amendment right to be presumed innocent until proven guilty, by her "overt act"  
17 of finding him responsible for the violation of **A.R.S. 28-701 A.**, in the absence of any evidence  
18 by the STATE OF ARIZONA proving that he was the actual driver of the vehicle alleged to have  
19 committed the traffic violation.  
20

21           138. The Constitutional right to a fair trial, protected by the Fourteenth Amendment to  
22 the Constitution of the United States, was clearly established law at the time of the violation of  
23 that right, and Judge BARSETTI knew or should have known that finding Daniel Gutenkauf  
24 responsible for **A.R.S. 28-701 A.**, without any photographic evidence proving the identity of the  
25 driver, would reasonably result in the deprivation of his right to a fair trial, under the Due

1 Process clause of the Fourteenth Amendment.

2 139. Judge BARSETTI breached her duty to rule fairly and impartially as a judge, and  
3 breached her duty to rule based on the preponderance of evidence, in “deliberate indifference” to  
4 Daniel Gutenkauf’s Constitutional right to a fair trial and Due Process under the Fourteenth  
5 Amendment.

6 140. Judge BARSETTI’S arbitrary and capricious abuse of governmental power and  
7 “deliberate indifference” to Daniel Gutenkauf’s substantive Due Process rights, was the  
8 proximate cause of financial damage to Daniel Gutenkauf, for the \$197.00 fine imposed, for the  
9 \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript and miscellaneous  
10 costs of legal research for the appeal.

11 141. 42 U.S.C.1983 imposes liability on any “person” who, under color of State law,  
12 deprives a person of any “rights, privileges, or immunities secured by the Constitution.

13 142. MARY JO BARSETTI is a “person” for purposes of liability under 42 U.S.C 1983.

14  
15 **COUNT VII**

16 **Violation of 42 U.S.C. 1983, Fourteenth Amendment**  
17 **Attorney General Goddard’s Failure to properly Advise and Supervise**  
18 **DPS, REDFLEX, and CITY OF TEMPE on procedure for A.R.S. 28-1561**

19 143. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
20 142 as though fully set forth herein.

21 144. According to Arizona Attorney General TERRY GODDARD, AG opinion No.I10-  
22 001(R09-027), the issuing of traffic citations is a State function.

23 145. The civil action against Daniel Gutenkauf for violation of A.R.S. 701. A was filed in  
24 the name of STATE OF ARIZONA as Plaintiff.

25 146. Pursuant to A.R.S. 28-333, the Attorney General shall prosecute and defend in the  
name of Arizona all actions necessary to carry out Title 28,Transportation.

1        147. **A.R.S. 41-1722** allows the photo enforcement vendor (REDFLEX TRAFFIC  
2 SYSTEMS, INC.) under color of State law, to issue traffic citations on behalf of the State of  
3 Arizona.

4        148. Attorney General GODDARD had a duty to ensure that DPS, ADOT, REDFLEX  
5 TRAFFIC SYSTEMS, INC., and CITY OF TEMPE POLICE DEPARTMENT were strictly  
6 following the provisions of **A.R.S. 28-1561** to have “reasonable grounds” to believe the person  
7 named was *the actual driver*, when certifying all traffic complaints for **A.R.S. 701A** violations.

8        149. Attorney General GODDARD knew or should have known that the system used by  
9 DPS, REDFLEX TRAFFIC SYSTEMS INC., and the TEMPE POLICE DEPARTMENT to  
10 issue citations in photo speed cases was not properly following the certification provisions  
11 required to identify the driver under **A.R.S. 28-1561**, based on notification from Arizona  
12 Superior Court Rulings, which reversed finding of responsibility in the case of Stephen Thomas  
13 Palermo (LC2006-000235-001 DT) and Craig Cameron Gillespie (LC2005-000597).

14        150. TERRY GODDARD, at all times acting as Arizona Attorney General, acting under  
15 color of State Law as legal advisor to the Department of Transportation, pursuant to **A.R.S. 28-**  
16 **333**, and as chief legal enforcement officer for the State pursuant to **A.R.S. 41- 192**, acting in the  
17 scope of his employment, but outside the scope of his authority, failed to properly advise DPS,  
18 whose duty was to regulate and supervise photo speed enforcement vendor REDFLEX  
19 TRAFFIC SYSTEMS INC, in following proper legal certification procedure to identify the  
20 driver, before issuing and mailing an Arizona Traffic Ticket and Complaint.  
21

22        151. TERRY GODDARD’S failure to properly advise DPS, ADOT, REDFLEX , and the  
23 TEMPE POLICE DEPARTMENT on proper Procedure for issuing traffic citations was a result  
24 of a policy or custom “deliberate indifference”, which caused injury to Daniel Gutenkauf’s  
25 Constitutionally protected right to Substantive and Procedural Due Process, protected by the



1 Fourteenth Amendment to the United States Constitution, and his Fourth Amendment right,  
 2 protecting him from warrants issued without probable cause and from malicious prosecution.

3 152. TERRY GODDARD breached his duty to give proper legal advice to DPS, ADOT,  
 4 REDFLEX TRAFFIC SYSTEMS INC., the CITY OF TEMPE, and the TEMPE POLICE  
 5 DEPARTMENT to follow the mandatory provisions of A.R.S. 28-1561 for issuance of photo  
 6 enforcement speed citations and the requirement to identify the driver, and his breach of duty  
 7 was the proximate cause of financial damage to Daniel Gutenkauf, for the \$197.00 fine imposed,  
 8 for the \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript and  
 9 miscellaneous costs of legal research for the appeal.

#### 10 COUNT VIII

#### 11 Violation of 42 USC 1983, Fourth Amendment and Fourteenth Amendment 12 REDFLEX CEO FINLEY's Failure to Train It's Employees

13  
 14 153. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 15 152 as though fully set forth herein.

16 154. Defendants REDFLEX TRAFFIC SYSTEMS, INC., CEO KAREN FINLEY,  
 17 Records Custodian BILL HARPER, and employee MATTHEW J. DeGRAW knew or should  
 18 have known that the system used by REDFLEX TRAFFIC SYSTEMS INC., to issue citations in  
 19 photo speed cases was not properly following the certification provisions required to identify the  
 20 actual driver under A.R.S. 28-1561, based on notification from Arizona Superior Court Rulings,  
 21 which reversed finding of responsibility in the case of Stephen Thomas Palermo (LC2006-  
 22 000235-001 DT) and Craig Cameron Gillespie (LC2005-00597), wherein BILL HARPER gave  
 23 sworn testimony on behalf of REDFLEX .

24 155. REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER and Mr.  
 25 DeGRAW knew that the photo speed enforcement citations sent to Daniel Gutenkauf through the

1 mail by REDFLEX's back office citation program contained knowingly false representations,  
 2 creating the false impression that the actual driver had been identified, in a fraudulent scheme  
 3 and artifice for the purpose of obtaining money from him by false pretenses.

4 156. Defendants REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER  
 5 and Mr. DeGRAW knew from the REDFLEX Procedures Manual for The Department of Public  
 6 Safety, AZ and for City of Tempe, which shows "Situation Criteria and Required Response",  
 7 that REDFLEX recommended acceptance and electronic signature certification of violation  
 8 notices, based only on a gender match with the registered owner of the vehicle, contrary to the  
 9 requirement of **A.R.S. 28-1561**. (See **EXHIBIT K**)

10 157. Defendants REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Ms. HARPER  
 11 and Mr. DeGRAW knew from the REDFLEX Procedures Manual for *The Department of Public*  
 12 *Safety, AZ*, which shows "Situation Criteria and Required Response", that REDFLEX  
 13 recommends "Send to Police" Departments for acceptance and electronic signature certification,  
 14 based only on a gender match with the registered owner of the vehicle, and "Issue Citation" even  
 15 when there is *a gender mismatch of driver* (DMV record v. Redflex picture) and *age mismatch of*  
 16 *driver* (DMV record v. Redflex picture) contrary to the strict requirement of **A.R.S. 28-1561** to  
 17 identify the actual driver (the person named herein committed the act(s)). (See **EXHIBIT K**)

18 158. Defendants REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER  
 19 and Mr. DEGRAW knew from the REDFLEX Procedures Manual *for Tempe, AZ*, under "V2-  
 20 Special Notes for Tempe", which shows "Situation Criteria and Required Response", that  
 21 REDFLEX recommended that Police officers for TEMPE POLICE DEPARTMENT "issue  
 22 citation", by acceptance and electronic signature certification, based only on a gender match with  
 23 the registered owner of the vehicle, and to "issue citation" even when there is *a gender mismatch*  
 24 *of driver* (DMV record v. Redflex picture) and *age mismatch of driver* (DMV record v. Redflex  
 25

1 picture) contrary to the strict requirement of **A.R.S. 28-1561** to identify the actual driver (the  
2 person named herein committed the act(s). (See **EXHIBIT L** )

3 159. Defendants REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER  
4 and Mr. DEGRAW knew that the REDFLEX Procedures Manual for DPS and CITY OF  
5 TEMPE made recommendation to “issue citation” in situations where there was no driver’s  
6 license number, no date of birth, and no license details of eye color, hair color, height, and  
7 weight, yet they knowingly, deliberately and intentionally engaged in unlawful conduct of  
8 sending Notices of Violation over the Internet for the purpose of inducing knowingly false  
9 certifications of traffic tickets by Tempe Police Officers, and issuance of traffic citations without  
10 “reasonable grounds” to believe the person cited was the actual driver.  
11

12 160. Each of the Defendants, REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr.  
13 HARPER and Mr. DeGRAW, were “persons” acting under color of State law, in enforcing  
14 **A.R.S. 28-701A.**, and acting in concert with ARIZONA DEPARTMENT OF PUBLIC SAFETY  
15 pursuant to **A.R.S. 41-1722**, as State Photo Enforcement vendor, and acting in concert with the  
16 CITY OF TEMPE and the TEMPE POLICE DEPARTMENT to issue traffic citations and to  
17 collect traffic fines imposed for photo speed enforcement violations.

18 161. Each of the Defendants, REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr.  
19 HARPER and Mr. DEGRAW, acting” under color of State law” under **A.R.S. 41-1722**, and  
20 enforcing **A.R.S. 28-701 A.**, acted knowingly, deliberately, and with malice and evil intent, to  
21 deprive Daniel Gutenkauf of his Constitutionally protected right to Due Process of Law under  
22 the Fourteenth Amendment to the U.S, Constitution, as well as depriving him of his Fourth  
23 Amendment right requiring probable cause to issue the traffic complaint, by acting in concert to  
24 gather photographic evidence and to mail a traffic citation to Daniel Gutenkauf, in the absence of  
25 any comparison of an MVD driver’s license photo, showing that he was the actual driver of the

1 vehicle alleged to have committed the traffic violation.

2 162. REDFLEX TRAFFIC SYSTEMS INC., and its employees Ms. FINLEY, Mr.  
3 HARPER, and Mr. DEGRAW's failure follow the mandatory provisions of **A.R.S. 28-1561** for  
4 issuance of photo enforcement speed citations and the requirement to identify the driver, and that  
5 breach of duty was the proximate cause of financial damage to Daniel Gutenkauf, for the  
6 \$197.00 fine imposed, for the \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial  
7 transcript and miscellaneous costs of legal research for the appeal.

### 8 **COUNT IX**

#### 9 **Violation of 42 USC 1983, Fourth Amendment and Fourteenth Amendment** 10 **DPS DIRECTOR VANDERPOOL's Failure to Train & Supervise REDFLEX**

11 163. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
12 162 as though fully set forth herein.

13 164. Defendant ROGER VANDERPOOL, former Director of Arizona Department of  
14 Public Safety (DPS) at the time of the events described herein, had a duty to regulate and  
15 supervise REDFLEX, the State Photo Enforcement vendor contracted pursuant to **A.R.S. 41-**  
16 **1722**, as described in TERRY GODDARD'S AG Opinion No.I10-001(R09-027)

17 165. As Chief Law Enforcement officer and Director of the Arizona Department of  
18 Public Safety, ROGER VANDERPOOL knew that **A.R.S. 28-1561** requires that the  
19 Complainant for a civil traffic ticket must have "reasonable grounds" to believe that the *person*  
20 *named* on the ticket committed the offense, as evidenced by DPS Lt. Jeff King's statement to the  
21 Arizona Republic newspaper that "the State has a driver responsibility law" and "DPS officers  
22 have to match the photo of the speeder with one on a driver's license." (See AZ Republic news  
23 article May 15, 2009 "Close to two-thirds of photos taken by speed cameras tossed")  
24

25 166. Mr. VANDERPOOL knew from the REDFLEX Procedures Manual for the

1 Department of Public Safety, AZ , and for City of Tempe, which shows “Situation Criteria and  
2 Required Response,” that REDFLEX recommended sending violation notices to municipal  
3 Police Departments for acceptance and electronic signature certification, based only on a gender  
4 match with the registered owner of the vehicle, contrary to the requirement of A.R.S. 28-1561 to  
5 have “reasonable grounds” to cite the person named in the ticket as the actual driver.

6 (See **EXHIBIT K**)

7  
8 167. ROGER VANDERPOOL knew from the REDFLEX Procedures Manual for the  
9 *Department of Public Safety, AZ*, which shows “Situation Criteria and Required Response”, that  
10 REDFLEX recommends “Send to Police” Departments for acceptance and electronic signature  
11 certification, based only on a gender match with the registered owner of the vehicle, and “Issue  
12 Citation” even when there is *a gender mismatch of driver* (DMV record v. Redflex picture) and  
13 *age mismatch of driver* (DMV record v. Redflex picture) contrary to the strict requirement of  
14 A.R.S. 28-1561 to identify the actual driver (the person named herein committed the act(s). (See  
15 **EXHIBIT K**)

16 168. Mr. VANDERPOOL knew from the REDFLEX Procedures Manual *for Tempe, AZ*,  
17 under “V2- Special Notes for Tempe”, which shows “Situation Criteria and Required Response”,  
18 that REDFLEX recommended that Police officers for TEMPE POLICE DEPARTMENT “issue  
19 citation”, by acceptance and electronic signature certification, based only on a gender match with  
20 the registered owner of the vehicle, and to “issue citation” even when there is *a gender mismatch*  
21 *of driver* (DMV record v. Redflex picture) and *age mismatch of driver* (DMV record v. Redflex  
22 picture) contrary to the strict requirement of A.R.S. 28-1561 to identify the actual driver (the  
23 person named herein committed the act(s). (See **EXHIBIT L**)

24  
25 169. Mr. VANDERPOOL knew that the REDFLEX Procedures Manual for DPS and  
CITY OF TEMPE made recommendation to “issue citation” in situations where there was no

1 driver's license number , no date of birth, and no license details of eye color, hair color, height,  
2 and weight, yet he ratified and tolerated such unlawful conduct by REDFLEX employees,  
3 thereby breaching his duty to regulate and supervise REDFLEX, pursuant to **A.R.S. 41-1722**,  
4 and in breach of his duty under **A.R.S. 38-231** to faithfully follow the U.S. Constitution, the  
5 Arizona Constitution, and to faithfully execute the laws of the State of Arizona, including  
6 **A.R.S. 28-1561 and A.R.S. 701A.**

7  
8 170. Mr. VANDERPOOL. had a duty to properly instruct, train, and supervise  
9 REDFLEX TRAFFIC SYSTEMS INC., and its employees Ms. FINLEY, Mr. HARPER, Mr.  
10 DeGRAW, and all Arizona municipal Police Departments, including the TEMPE POLICE  
11 DEPARTMENT, in following proper legal procedure to issue an Arizona Traffic Ticket and  
12 Complaint, by means of the Complainant personally reviewing the traffic ticket and exhibits, and  
13 having "*reasonable grounds*" to believe that the person named in the traffic ticket as the actual  
14 driver, prior to the Complainant's computer signature being printed on the traffic ticket.

15 171. Mr. VANDERPOOL's failure to properly instruct, train and supervise REDFLEX  
16 TRAFFIC SYSTEMS INC., and its employees Ms.FINLEY, Mr. HARPER, Mr. DeGRAW, and  
17 all Arizona municipal Police Departments, including the TEMPE POLICE DEPARTMENT, in  
18 following proper legal certification procedure to issue Arizona Traffic Ticket and Complaint,  
19 was a result of an official custom, policy or standard of only making a "gender match" with  
20 driver's motor vehicle registration information, in "deliberate indifference" to Daniel  
21 Gutenkauf's Constitutionally protected right to Substantive and Procedural Due Process,  
22 protected by the Fourteenth Amendment to the United States Constitution, and in "deliberate  
23 indifference" to Daniel Gutenkauf's Fourth Amendment right, which prohibits malicious  
24 prosecution without probable cause.  
25

172. Mr. VANDERPOOL's actions and omissions were done "under color of state law",

1 pursuant to A.R.S. 41-1722, A.R.S. 28-1561, A.R.S. 28-701 A., and under color of the authority  
 2 of his position as Director of Arizona Department of Public Safety, acting within the scope of his  
 3 employment, but acting outside the scope of his authority at the time of the events described  
 4 herein.

5 173. Mr. VANDERPOOL's policy of "deliberate indifference" was the moving force in  
 6 the violation of Daniel Gutenkauf's Constitutional right to Due Process of Law under the  
 7 Fourteenth Amendment, and the Deprivation of his Fourth Amendment right to have no warrant  
 8 issue except upon probable cause, and said deprivation of rights, which were clearly established  
 9 law.  
 10

11 174. Mr. VANDERPOOLS's custom and policy of "deliberate indifference" and his  
 12 ratification and reckless tolerance of unlawful conduct (false certification of traffic tickets) by  
 13 REDFLEX employees and CITY OF TEMPE Police Officers, was the proximate cause of the  
 14 financial damage to Daniel Gutenkauf, for the \$197.00 fine imposed, for the \$147.00 cost of  
 15 filing the appeal, for the \$485.00 cost of the trial transcript, and for miscellaneous costs of legal  
 16 research for the appeal.

#### 17 **COUNT X**

#### 18 **Violation of 42 USC 1983, Fourteenth Amendment** 19 **CASEY ARNETT Served Traffic Ticket absent Positive I.D. of Driver**

20 175. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 21 174 as though fully set forth herein.

22 176. On October 21, 2008, CASEY ARNETT, a process server hired by AAA PHOTO  
 23 SAFETY INC., made service of process of the Arizona Traffic Ticket and Complaint to Daniel  
 24 Gutenkauf at his home address.

25 177. The Arizona Traffic Ticket and Complaint served on Daniel Gutenkauf by CASEY  
 ARNETT on October 21, 2008, at 4:36 pm contained no information regarding height, eye color,



1 hair color, origin, Date of Birth, or driving restrictions, for the ticket Defendant, and the process  
2 server knew or should have known, by the lack of that information, that no positive identification  
3 of the driver had been matched. (See **EXHIBIT M**)

4 178. The Affidavit of Service to Daniel Gutenkauf by process server CASEY ARNETT  
5 shows only an estimation of approximate age of 50-59, instead of DOB, which confirms that the  
6 process server knew that there had been no positive identification of Daniel Gutenkauf as the  
7 actual driver, who allegedly violated **A.R.S. 701 A**, as stated on the Traffic Ticket and  
8 Complaint. (See **EXHIBIT N**, Affidavit of Service)

9 179. The Redflex Procedural Manual for the Department of Public Safety AZ, for April  
10 2009 gives the instruction that "Both DL and DOB info are required" to issue a citation. (See  
11 **EXHIBIT K**)

12 180. The Declaration of Service affidavit for the Arizona Traffic Ticket and Complaint,  
13 served on Daniel Gutenkauf on October 21, 2008 at 4:36 pm, shows that process server CASEY  
14 ARNETT, Declarant, is an Officer of Maricopa County Superior Court.

15 181. CASEY ARNETT, acting under color of State law, pursuant to **A.R.S. 28-701 A**,  
16 under color of his authority as an Officer of Maricopa County Superior Court, knowingly,  
17 intentionally, acted with "deliberate indifference" to Daniel Gutenkauf's Constitutional right  
18 under the Fourth Amendment to have a warrant or complaint issued only upon by probable  
19 cause, when serving the traffic ticket, and in "deliberate indifference" to his right to procedural  
20 Due Process, protected by the Fourteenth Amendment, and in violation of **42 U.S.C. 1983**.  
21

22 182. Mr. ARNETT's "deliberate indifference " to the Plaintiff's Constitutional rights  
23 was the proximate cause of the financial damage to Daniel Gutenkauf, for the \$197.00 fine  
24 imposed, for the \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript, and  
25 for miscellaneous costs of legal research for the appeal.

COUNT XI

**Conspiracy to Deprive Rights Under Color of State Law (42 USC 1983)**  
**By REDFLEX Employees, CITY OF TEMPE Employees, & STATE of Az Employees**

183. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 182 as though fully set forth herein.

184. Upon information and belief, REDFLEX TRAFFIC SYSTEMS, INC., and Ms. FINLEY, Mr. HARPER, and Mr. DeGRAW, acting in concert with former DPS Director VANDERPOOL and the CITY OF TEMPE and TEMPE CITY COURT, have constructed an elaborate plan, executed by means of a conspiracy, with a common purpose to deprive Daniel Gutenkauf (and other similarly situated motor vehicle owners and drivers) of the Constitutionally protected right to a fair trial under the Fourteenth Amendment, by preparing and presenting to Tempe City Court judges and witnesses a Court Administration Module (CAM) which “presents and assesses common dispute and defense tactics and appropriate counter-measures required for successful prosecution” of the alleged traffic violation. (See **EXHIBIT O**, Redflex/DPS Solicitation No:L8-022, Question #5-Pg.2).(See also **EXHIBIT W**, Redflex/City of Tempe Solicitation No:07-045, pages 62 and 63)

185. Upon information and belief, Ms. GALLEG0, acting in concert with Judge BARSETTI, knowingly and intentionally colluded and conspired with REDFLEX TRAFFIC SYSTEMS INC., Ms. FINLEY, Mr. HARPER, Mr. DeGRAW, and Mr. ARNETT, to engage in a “sham legal proceeding” for Defendants, by agreeing to study the REDFLEX court training materials (CAM materials) with the common purpose to coordinate and execute a deceptive strategy, by REDFLEX, the TEMPE POLICE DEPARTMENT, and the TEMPE CITY COURT to overcome the legal and scientific arguments of Defendant drivers, and thereby deny the Defendant(s) of the right to a fair trial.

1 186. Ms. GALLEGO's giving sworn testimony and presenting Redflex Exhibits #1  
2 through #6 on 2/17/2009, were "overt acts", knowingly, deliberately and intentionally done in  
3 the furtherance of a Conspiracy to deny Daniel Gutenkauf of his Constitutionally protected right  
4 to Due Process of Law under the Fourteenth Amendment, because she knew there had been no  
5 positive ID of the driver.

6 187. Ms. GALLEGO's acts were done" under color of State law", enforcing **A.R.S. 701**  
7 **A**, as a Traffic Enforcement Aide for the CITY OF TEMPE POLICE DEPARTMENT.

8 188. BILL HARPER, acting under color of State law **A.R.S. 701 A**, and **A.R.S. 41-1722**,  
9 as Records Custodian for photo enforcement vendor REDFLEX, acting in concert with Ms.  
10 GALLEGO, knowingly, intentionally, and deliberately reached an understanding with Ms.  
11 GALLEGO, to deprive Plaintiff of his Constitutionally protected right to Due Process of law  
12 under the Fourteenth Amendment, by committing the "overt acts" of assembling State's Exhibits  
13 #1 through #6, and sending the evidence package to the State's witness GALLEGO, via U.S.  
14 mail or internet sometime in December, 2008, knowing that the evidence package contained no  
15 Positive I.D. of Mr. Gutenkauf as the actual driver.

16 189. Ms. BARSETTI, acting under color of State law **A.R.S. 701 A**, and under color of  
17 authority as Judge Pro Tem, reached an agreement with Ms. GALLEGO, to knowingly,  
18 intentionally, and deliberately deprive Plaintiff of his right to a fair trial, protected by the  
19 Fourteenth Amendment, by being a willing participant to conduct a "sham legal proceeding",  
20 without any evidence of the identity of the driver, and without any jurisdiction, and her ruling of  
21 "Responsible" was an overt act in the furtherance of a conspiracy to deprive Plaintiff of his  
22 Constitutional right to Due Process, protected by the Fourteenth Amendment.

23 190. Tempe Mayor HUGH HALLMAN and the members of the TEMPE CITY  
24 COUNCIL, Mr. NAVARRO, Mr. ARREDONDO, Ms. ELLIS, Mr. MITCHELL, Ms.  
25

1 SHEKERJIAN, and WOODS, indirectly “aided and abetted” the conspiracy to deprive Plaintiff  
2 of his Constitutionally protected rights under the Fourth, Sixth, and Fourteenth Amendments by  
3 the knowing, intentional and deliberate “overt act” of awarding the Photo Enforcement contract  
4 to REDFLEX TRAFFIC SYSTEMS INC., on 7-19-2007.

5 191. In the Minutes of Tempe City Council meeting on April 9, 2009, City Manager  
6 CHARLIE MEYER summarized that the Photo Enforcement Program is a cooperative effort  
7 between the Courts, the Police Department, and Traffic Engineering, which includes Tempe  
8 Traffic Engineer SHELLY SEYLER. (See **EXHIBIT P**)

9 192. On April 23, 2009, a motion by Tempe City Council member ARREDONDO “aided  
10 and abetted” the conspiracy to deprive Plaintiff and other similarly situated vehicle owners and  
11 drivers, by making his motion to increase the contract amount with REDFLEX TRAFFIC  
12 SYSTEMS INC., for the CITY OF TEMPE’s Photo Enforcement Program, which was seconded  
13 by Councilman NAVARRO and approved by all City Council members on a roll call vote of  
14 7-0, which constituted “overt acts” in the furtherance of the conspiracy to deprive Plaintiff and  
15 all other similarly situated vehicle owners and drivers, of their right to Due Process of Law under  
16 a Photo Enforcement system which issues citations only on a “gender match”.  
17

18 193. Mr. ARREDONDO and Mr. NAVARRO were both acting under color of State law,  
19 under color of authority as TEMPE CITY COUNCIL members, acting within the scope of their  
20 employment, but outside the scope of their authority.

21 194. At a Tempe Transportation Commission meeting on August 11, 2009, Lt. NOAH  
22 JOHNSON gave a Photo Enforcement update wherein he stated that the Process for issuing  
23 traffic violations begins with Redflex reviewing photos and then forwarding them on to PD who  
24 then utilizes three civilian officers to review violations using side by side driver license  
25 comparison.

1           195. At the Tempe Transportation Commission meeting on 8-11- 09, Lt. JOHNSON's  
2 description that the civilian officers review violations using side by side driver license  
3 comparison is in conflict with the sworn testimony of Ms. GALLEGO in Tempe City Court on  
4 2-17-09, wherein she testified that there is NO comparison of the driver's license photo ID with  
5 the Redflex photo before the certification of the traffic ticket, which is based only a 'gender  
6 match".

7           196. At the August 11, 2009 Tempe Transportation Commission meeting, Lt. JOHNSON  
8 stated that a "gender match" is typically used in place of the side by side driver's license  
9 comparison for out of state violators, and Traffic Engineer SHELLY SEYLER was present for  
10 that meeting. (See **EXHIBIT Q**, pg 2, last paragraph in Agenda item 3)

11           197. Lt. JOHNSON's statement about using only a gender match for out of State  
12 violators shows an agreement with REDFLEX's back office procedures and Procedures manual  
13 instruction for false certification, and an agreement with the Tempe Police Department's policy  
14 of "deliberate indifference" to the Constitutional rights of Plaintiff and other similarly situated  
15 motor vehicle owners and drivers.

16           198. Lt. JOHNSON, acting under color of State law, enforcing **A.R.S.28-701 A. and**  
17 **A.R.S. 41-1722**, and under color of authority as a Tempe Police Officer, acting in the scope of  
18 his employment, but outside the scope of his authority, knowingly and intentionally "aided and  
19 abetted" the conspiracy in a fraudulent scheme to obtain money by false pretenses by the" overt  
20 act" of participating and presenting information to the Tempe Transportation Commission on  
21 August 11, 2009 about using only "gender matches" for out of state violators and representing it  
22 to be an acceptable practice for issuing traffic citations, in knowing violation the requirement to  
23 positively identify the driver pursuant to **A.R.S. 28-1561**.

24           199. Lt. JOHNSON's agreement with the TEMPE POLICE DEPARTMENT's policy of  
25

1 “deliberate indifference”, and failure to train subordinate officers in proper procedure for issuing  
2 traffic tickets, made it reasonably foreseeable that such policy would result in deprivation of  
3 Plaintiff’s Fourth Amendment right to no warrant (traffic ticket) issued except on probable cause,  
4 and deprivation of Plaintiff’s Fourteenth Amendment right to Due Process of law.

5 200. Mr. HARPER had previously given sworn testimony in the traffic court cases of  
6 Stephen Palermo and Craig Cameron Gillespie that no comparison was made with driver’s  
7 license photo ID, unless an attorney filed a notice of appearance on behalf of the driver, prior to  
8 the scheduled court date.

9 201. DAVID PICKRON, who owns and operates AAA Photo Safety, Inc. had a contract  
10 with REDFLEX to provide process servers to deliver photo speed tickets for the CITY OF  
11 TEMPE at the time that Mr. Gutenkauf was given service of process for the ticket dated  
12 9/02/2008.

13 202. Upon information and belief, in an interview published February 8, 2007, Mr.  
14 PICKRON told New Times journalist Ray Stern that AAA Photo Safety process servers only go  
15 to the address that matches the vehicle registration.

16 203. Mr. PICKRON knew from the 2/08/2007 New Times article that Redflex clerks use  
17 the license plate in the photo to look up the address of the vehicle’s registered owner, but they  
18 don’t have access to MVD photos, so no positive ID is made before a citation is sent out.

19 204. Mr. PICKRON knew that the City of Tempe does not compare the person in the  
20 violation Photo with a driver’s license before the photo speed citation is issued.

21 205. Mr. PICKRON knew that the traffic tickets being served by his company AAA  
22 PHOTO SAFETY INC., were issued in violation of Arizona law, which requires the officer to  
23 certify that there are “reasonable grounds to believe that the person listed on the traffic ticket  
24 committed the infraction.  
25

1       206. Mr. PICKRON knew or should have known that his policy of allowing his process  
2 servers, especially Mr ARNETT, to serve a traffic ticket without identifying the driver, would  
3 lead to the foreseeable result of depriving all photo speed Defendants, especially Mr. Gutenkauf,  
4 of the 14<sup>th</sup> Amendment right to Due Process of Law, and the Fourth Amendment right that no  
5 warrant shall issue except upon probable cause.

6       207. Mr. PICKRON "aided and abetted" the conspiracy to violate Mr. Gutenkauf's  
7 Constitutional Rights under the Fourth and Fourteenth Amendments by committing the "overt  
8 act" assigning Casey Arnett to perform service of process on Mr. Gutenkauf, and then paying  
9 Mr. ARNETT for his service, when Mr. PICKRON knew that the procedure used by Redflex and  
10 City of Tempe to issue traffic citations was in violation of **A.R.S. 28-1561**.

11       208. Mr. PICKRON, was acting "under color of state law" as an agent for CITY OF  
12 TEMPE and REDFLEX, by assigning Mr. ARNETT to serve the traffic citation issued under  
13 **A.R.S. 28-1561**, which was served on Mr. Gutenkauf, in order to enforce **A.R.S. 28-701 A**.

14       209. GRAHAM DAVIE, CEO of REDFLEX HOLDINGS LTD, of Australia was aware  
15 of lawsuits brought against its U.S. subsidiary REDFLEX TRAFFIC SYSTEMS INC, because  
16 is a Director of RTS Inc and he referenced those lawsuits on page 15 of Redflex Annual Report  
17 2009.

18       210. Upon information and belief, Mr. DAVIE was aware of lawsuits against REDFLEX  
19 in Tennessee, (Williams v. Redflex filed on 10-16-2006) in South Dakota (Wiedermann v. Sioux  
20 Falls in 2007) and in Louisiana (Sevin and Bernard v. Parish of Jefferson and Redflex Traffic  
21 Systems, filed on Jan. 31, 2008).

22       211. The lawsuits against REDFLEX in Tennessee, South Dakota, and Louisiana alleged  
23 violation of constitutional rights of Due Process under the Fourteenth Amendment and violation  
24 of civil rights under **42 U.S.C. 1983**.

1        212. Mr. DAVIE was aware of the issuance of tickets to the registered owners, instead of  
2 the actual driver, in violation of state law, and the unconstitutional reversal of burden of proof  
3 upon the Defendants in court proceedings, as alleged in the said Complaints in other States.

4        213. Mr. DAVIE acquiesced to the conspiracy to violate Constitutional rights of traffic  
5 ticket Defendants by his having knowledge of the torts, combined with his failure to act, showing  
6 a pattern and policy of "deliberate indifference" to the Constitutional rights of Mr. Gutenkauf  
7 and other similarly situated motor vehicle owners/traffic ticket Defendants.

8        214. Mr. DAVIE, as CEO of REDFLEX HOLDINGS LIMITED, and as a Director of  
9 RTS Inc., was "acting in concert" with City of Tempe by providing camera equipment and  
10 having supervisory responsibilities over back office ticket procedures in Phoenix, as shown on  
11 page 5 of Redflex Holdings Limited Annual General Meeting 2010 Chief Executive Officer's  
12 Report.

13        215. The above described "overt acts" and failures to act of each of the Defendants  
14 DAVIE, FINLEY, HARPER, DEGRAW, BARSETTI, GALLEG0, COLOMBE, ARNETT,  
15 JOHNSON, SEYLER were executed in the furtherance of a conspiracy to engage in a fraudulent  
16 scheme or artifice to obtain money by false pretenses.

17        216. Each of the named Defendants, DAVIE, FINLEY, HARPER, DEGRAW,  
18 BARSETTI, GALLEG0, COLOMBE, PICKRON, ARNETT, all acting under color of State law  
19 **A.R.S. 701A**, and under color of authority of law, working with DPS and CITY OF TEMPE to  
20 assist in doing photo speed enforcement, committed overt acts in the furtherance of the  
21 conspiracy to deprive Daniel Gutenkauf of his Constitutional Right to a fair trial, protected by  
22 the Fourteenth Amendment.

23        217. REDFLEX CEO FINLEY, who is also an Executive Board member of REDFLEX  
24 HOLDINGS LTD., is responsible for back office training in issuing traffic citations, and her  
25



1 failure to properly train her employees to follow the requirement to positively identify the driver  
 2 before sending out traffic citations, led to the reasonably foreseeable result that the REDFLEX  
 3 procedure for issuing traffic tickets was bound to cause a deprivation of a property right without  
 4 Due Process of law to Plaintiff Gutenkauf.

5 218. Ms. FINLEY and Officer COLOMBE reached an understanding to deprive Plaintiff  
 6 of his Constitutional right to Due Process, as shown by the REDFLEX Procedures Manual for  
 7 Tempe, which instructs the reviewing police officer to accept the Notice of Violation sent by  
 8 encrypted email, based only on a "gender match". (See **EXHIBIT L**, Redflex Procedures manual  
 9 with special instructions for Tempe, AZ for April 2009)

10 219. Officer COLOMBE and Ms. FINLEY were willful participants, acting in concert, in  
 11 the coordinated activity of issuing false certifications without comparing a driver's license photo  
 12 of Plaintiff to the Redflex photo.  
 13

14 220. Officer COLOMBE's false certification of the traffic citation to Daniel Gutenkauf  
 15 on 9/02/2008, was an "overt act" in the furtherance of a conspiracy to deny Plaintiff of his  
 16 Constitutionally protected right to procedural Due Process under the Fourteenth Amendment.

17 221. Officer COLOMBE and Judge ARKFELD reached an agreement to deny Plaintiff of  
 18 his Fourth Amendment right to have no warrant issue except upon probable cause, and Judge  
 19 ARKFELD's signature on the Traffic Ticket issued to Plaintiff on 9/02/2008, was a knowing  
 20 and intentional "overt act" in the furtherance of a conspiracy to deny Plaintiff of his  
 21 Constitutionally protected right to procedural Due Process under the Fourteenth Amendment.  
 22

23 222. Each of the REDFLEX Defendants ( DAVIE, FINLEY, HARPER, DeGRAW), and  
 24 TEMPE CITY COURT Defendants (BARSETTI, ARKFELD, RODRIQUEZ), and TEMPE  
 25 POLICE DEPARTMENT Defendants (RYFF, JOHNSON, GALLEG0, COLOMBE), CITY OF  
 TEMPE Defendants (HALLMAN, NAVARRO, ARREDONDO, ELLIS, MITCHELL, .

1 SHEKERJIAN, WOODS, HORT, MEYER, McALLISTER), STATE OF ARIZONA  
2 Defendants (VANDERPOOL, HALIKOWSKI, GODDARD), and Defendants PICKRON,  
3 ARNETT directly or indirectly received a distribution of proceeds from the traffic fine, as shown  
4 in the pie illustration, provided by Tempe City Court and published on page 3 of Tempe News in  
5 the Arizona Republic, dated Friday, February 27, 2009. (See **EXHIBIT A**, Notice of Claim  
6 Against City of Tempe, with attachment showing headline “City gets \$1.56 million from photo  
7 enforcement”)

8  
9 223. The news article in Exhibit G shows the \$171 fine breakdown, in a slice of the pie  
10 illustration, with Redflex receiving \$36, Tempe Courts receive \$10, City of Tempe gets \$36 and  
11 the State of Arizona gets \$89.

12 224. On September 16, 2010, Plaintiff made a public records request to The CITY OF  
13 TEMPE City Clerk’s Office for a certified copy of three documents, including 1) the 2007  
14 Agreement between REDFLEX TRAFFIC SYSTEMS, INC., and the CITY OF TEMPE for  
15 photo speed enforcement 2) a certified copy of the Redflex Procedures Manual for Tempe, AZ  
16 containing instructions for issuing red light and photo Speed citations and 3) a certified copy of  
17 the Redflex training packet for Tempe Court Personnel. (See **EXHIBIT R**)

18 225. On September 16, 2010, Plaintiff made a public records request for a certified copy  
19 of the agreement between CITY OF TEMPE and REDFLEX TRAFFIC SYSTEMS, as well as a  
20 copy of the Redflex procedures for issuing traffic citations and its court training manuals for the  
21 CITY OF TEMPE.

22 226. On September 24, 2010, Defendant GREENE mailed to the Plaintiff a certified copy  
23 of the Redflex contract, along with a cover letter stating that he was continuing to search for the  
24 other two documents requested and would forward them as soon as the documents were located.

25 227. On Friday, October 1, 2010, Plaintiff called City of Tempe City Clerk’s office

1 to find out if the requested documents had been located, and Karen Fillmore referred Plaintiff to  
2 MICHAEL GREENE, Central Services Administrator.

3 228. Mr. GREENE informed Plaintiff that he would mail the Redflex contract, but he was  
4 still trying to locate the other two requested documents.

5 229. On Friday, October 1, 2010, at approximately 1:39 pm, MICHAEL GREENE left a  
6 message on Plaintiff's voice mail, stating that he had emailed other City of Tempe Department  
7 divisions, but was unable to locate the Redflex Procedures Manual for Tempe, AZ containing  
8 instructions for issuing red light and photo Speed citations and the Redflex training packet for  
9 Tempe Court Personnel.

10 230. On Saturday, October 2, 2010, Plaintiff received a letter from Mr. GREENE, stating  
11 that the CITY OF TEMPE was unable to locate the remaining two documents requested two  
12 weeks earlier, and that the employees who had assisted in this search had no recollection of  
13 having received those documents and were unable to locate them in their search. ( **EXHIBIT S** )

14 231. The letter from Mr. GREENE , dated September 29, 2010 and postmarked on Oct. 1,  
15 2010 created the false impression that the CITY OF TEMPE had never received either the  
16 Redflex Procedures Manual for Citations or the Court Training Packet and it appears it was  
17 intended to deceive Plaintiff in that regard.

18 232. Plaintiff had previously obtained a copy of Redflex Procedures Manual for DPS and  
19 for City of Tempe AZ, revised as of April, 2009, through an online source several months earlier  
20 at Camerafraud.com.

21 233. It *appears* that Mr. GREENE may have knowingly and intentionally *attempted to*  
22 *commit Mail Fraud (18 USC 1341)* by sending his letter to Plaintiff on Oct. 1, 2010.

23 234. It *appears* that Mr. GREENE knowingly and intentionally attempted to impair the  
24 availability of two public records, in violation of **A.R.S. 13-2407**, (Tampering with a public  
25

1 record) whereby section A. provides that “A person commits tampering with a public record if,  
2 with the intent to defraud or deceive, such person knowingly: (section 4) Destroys, mutilates,  
3 conceals, removes, or otherwise impairs the availability of a public record.

4 235. Defendant GREENE’S phone call and mailing of his letter to Plaintiff on Oct. 1,  
5 2010, were two “overt acts” in the furtherance of the conspiracy to deprive Plaintiff of his  
6 Constitutional rights under the Fourth, Fifth, Sixth and Fourteenth Amendments.

7 236. The REDFLEX photo enforcement contract with the CITY OF TEMPE, signed on  
8 July 19, 2007, shows in section 1.25 on page 4 of 30 that Defendant JOE BERNARD is  
9 designated as “Redflex Project Manager”, who, among other duties listed, is responsible for the  
10 implementation of the Photo Speed and Photo Red Light Enforcement Program, and who shall  
11 have the power and authority to make management decisions relating to Redflex’s obligations  
12 pursuant to this Agreement.

13 237. Upon information and belief, Mr. BERNARD acted as single point of contact for  
14 THE CITY OF TEMPE during the implementation phase of the photo enforcement program, and  
15 he knowingly and willingly agreed to “aid and abet” the conspiracy to obtain money by false  
16 pretenses. (See EXHIBIT X, page 106 of Redflex/City of Tempe Solicitation No. 07-045,)  
17

18 238. DAVID McALLISTER, Risk Management specialist for CITY OF TEMPE, agreed  
19 to “aid and abet” the conspiracy to obtain money by false pretenses, by the over acts of  
20 misrepresenting the terms of the City of Tempe Release Contract to Mr. Gutenkauf, on the phone  
21 and in mailed correspondence, as stated in paragraphs 69 through 98 above, in order to protect  
22 REDFLEX from civil liability under its agreement with CITY OF TEMPE signed on 7-19-2007.  
23

24 239. Each of the Defendants listed here in Count XI, individually and in concert with the  
25 others, acted under pretense and color of law and their official capacity, but such acts were  
beyond the scope of their jurisdiction and without authorization of law.

240. Each Defendant named in Counts I through Count XI, individually and in concert with the others named herein, acted under color of State law, pursuant to A.R.S. 28-701 A., and acted willfully, knowingly, and with specific intent to deprive Plaintiff of his right to Due Process of Law, secured to Plaintiff by the Fourteenth Amendment to the Constitution of the United States, his right to have a warrant or complaint issued only upon probable cause, as secured by the Fourth Amendment, and in with specific intent to deprive Plaintiff of his rights secured by Title 42, United States Code section 1983, and in "deliberate indifference" to those rights.

240. The overt acts each of the Defendants described above, acting in concert, in "deliberate indifference" to the Plaintiff's Constitutional rights was the proximate cause of the financial damage to Daniel Gutenkauf, for the \$197.00 fine imposed, for the \$147.00 cost of filing the appeal, for the \$485.00 cost of the trial transcript, and for miscellaneous costs of legal research for the appeal.

### **PRAYER FOR RELIEF**

Plaintiff has no adequate and sufficient post- deprivation remedy available at law with which to address the wrongs alleged herein and will continue to suffer irreparable injury from the conduct of Defendants unless he is granted equitable relief prayed for herein.

WHEREFORE, Plaintiff requests judgment against Defendants, and each of them, for joint and several liability, for:

1. Compensatory damages as proven at trial; to be paid in U.S. Dollars, a U.S. Dollar will be defined as one ounce silver coin of .999 fine silver, pursuant to the Coinage Act of 1792, or the equivalent par value in gold coins.
2. Punitive damages based on ten percent of each Defendant's wealth, as determined by a

jury; to be paid in U.S. Dollars, a U.S. Dollar will be defined as one ounce silver coin of .999 fine silver, pursuant to the Coinage Act of 1792, or the equivalent par value in gold coins.

3. **Four Million dollars** in damages, compensatory and punitive combined (for this cause of action)

4. Demand for jury trial on all issues so triable.

5. Pursuant to **42 U.S.C. section 1988**, Plaintiff is entitled to a reasonable allowance for attorney fees as part of his costs, if applicable, for any fees incurred for advisory counsel.

6. Costs of suit; and

7. Such other and further relief as the court deems just and proper.

## Cause of Action #2: Civil RICO

### COUNT I

**Violation of 18 U.S.C. 1961 et seq., Racketeer Influenced and Corrupt Organizations (RICO), 18 USC 1962 (c) 18 U.S.C. 1341, Mail Fraud, Fraudulent Scheme to obtain money by false pretenses : "Perjury for Profit"**

241. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 240 as though fully set forth herein.

242. **Title 18 U.S.C. 1962 (c)** states:

It shall be unlawful for any *person* employed by or associated with any *enterprise* engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

**18 USC 1961 (3)** "person" includes any individual or entity capable of holding a legal or beneficial interest in property.

1           **18 USC 1961 Definitions, (4)** “enterprise” includes any individual  
 2                                      partnership, corporation, association, or other legal  
 3                                      entity and any union or group of individuals associated  
    in fact, although not a legal entity.

4           243. Defendant REDFLEX TRAFFIC SYSTEMS, INC., is an “enterprise” engaged in  
 5           and the activities of which affect interstate commerce, to wit: a corporation incorporated under  
 6           the laws of the STATE OF ARIZONA, with contracts for business of photo speed enforcement  
 7           in other States such as Alabama, California, Illinois, New Jersey, New York, Ohio, Oregon,  
 8           Tennessee, and Virginia, according to Redflex Holdings Limited Investor Briefing August 2010.

9           244. Defendant REDFLEX TRAFFIC SYSTEMS, INC., is an “enterprise” engaged in  
 10           and the activities of which affect interstate or foreign commerce, to wit: KAREN FINLEY, BILL  
 11           HARPER, AND MATTHEW J. DEGRAW, are persons employed by REDFLEX TRAFFIC  
 12           SYSTEMS INC., who have engaged in a fraudulent scheme or artifice, with a common purpose  
 13           and agreement to to obtain money by false pretenses, by knowingly and intentionally using the  
 14           mails to send false certifications of traffic citations, based only on gender matches of photos and  
 15           vehicle registration information, without having identified the actual driver, as required by law  
 16           under **A.R.S. 28-1561 A**, and engaging in predicate criminal acts constituting a “pattern of  
 17           racketeering”, in violation of **18 U.S.C.1962(c)** (civil RICO), and in violation of **18 U.S.C. 1341**,  
 18           **MailFraud, 18 U.S.C. 1343, Wire Fraud, and 18 U.S.C. 1951(b)(2) Extortion.**

19           (See **EXHIBIT T**, Plaintiff’s visual diagram of the “*wheel*” theory for RICO **18 USC 1962 (c)**.)

20           245. Defendant REDFLEX HOLDINGS LTD., is an “enterprise” engaged in and the  
 21           activities of which affect interstate commerce, to wit: a foreign corporation with its principal  
 22           place of business in the USA in Phoenix, Arizona, with contracts for business of photo speed  
 23           enforcement in other States such as Alabama, California, Illinois, New Jersey, New York, Ohio,  
 24           Oregon, Tennessee, and Virginia, according to Redflex Holdings Limited Investor Briefing  
 25

1 August 2010.

2 246. Defendant REDFLEX HOLDINGS LTD, is an “enterprise” engaged in and the  
 3 activities of which affect interstate or foreign commerce, to wit: GRAHAM DAVIE (RHL CEO  
 4 and RTS Director) and KAREN FINLEY (RHL Executive Board member and RTS CEO) are  
 5 “persons” employed by REDFLEX HOLDINGS LTD, who have engaged in a fraudulent scheme  
 6 or artifice, with a common purpose and agreement to to obtain money by false pretenses, by  
 7 knowingly and intentionally using the mails to send false certifications of traffic citations, based  
 8 only on gender matches of photos and vehicle registration information, without having identified  
 9 the actual driver, as required by law under **A.R.S. 28-1561 A**, and engaging in predicate criminal  
 10 acts constituting a “pattern of racketeering”, in violation of **18 U.S.C.1962(c)** (civil RICO), and  
 11 in violation of **18 U.S.C. 1341, MailFraud, 18 U.S.C. 1343, Wire Fraud, and 18 U.S.C.**  
 12 **1951(b)(2) Extortion.** (See **EXHIBIT T**, Plaintiff’s visual diagram showing the “wheel” theory  
 13 of RICO conspiracy. **18 USC 1962 (c) and (d)** as applied to all the Defendants listed herein)

14 247. Mail Fraud, one of the predicate criminal racketeering acts listed under **18 USC**  
 15 **1961(1)** civil RICO, is defined in **18 USC 1341: Frauds and swindles:**

17 Whoever, having devised or intending to devise any scheme or artifice  
 18 to defraud, or obtain money or property by means of false or fraudulent  
 19 pretenses, representations or promises.....for the purpose of executing  
 20 such scheme or artifice or attempting so to do, places in any post office  
 21 or authorized depository for mail matter, any matter or thing whatever  
 22 to be sent or delivered by the Postal Service, or deposits or causes to be  
 23 deposited any matter or thing whatever to be sent or delivered by any  
 24 private or commercial interstate carrier, or takes or receives therefrom,  
 any such matter or thing, or knowingly causes to be delivered by mail  
 or such carrier according to the direction thereon, or at the place at which  
 it is directed to be delivered by the person to whom it is addressed, any  
 such matter or thing, shall be fined under this title or imprisoned not more  
 than 20 years, or both.

25 248. Upon information and belief, based on a report from the State of Arizona Office of  
 the Auditor General, dated January 19, 2010, The ARIZONA DEPARTMENT OF PUBLIC



1 SAFETY's photo enforcement vendor (REDFLEX) is responsible for generating and mailing  
2 notices of violations for photo speed enforcement.

3 249. Upon information and belief, based on an executive profile and biography published  
4 by BusinessWeek, REDFLEX CEO KAREN FINLEY's responsibilities included *program*  
5 *management* and back office citation processing.

6 250. Upon information and belief, REDFLEX TRAFFIC SYSTEMS INC., photographs  
7 facial images and license plates of vehicles exceeding the speed limit by 11 mph, and processes  
8 traffic violation tickets, purporting to do verification of information at its Scottsdale Airpark  
9 Office, before sending the information to Tempe City Court.

10 251. Defendants REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER,  
11 and Mr. DEGRAW knew or should have known that the system used by R. T. S. INC., to issue  
12 citations in photo speed cases was not properly following the certification provisions required to  
13 identify the actual driver under A.R.S. 28-1561, based on notification from Arizona Superior  
14 Court Rulings, which reversed finding of responsibility in the case of Stephen Thomas Palermo  
15 (LC2006-000235-001 DT) and Craig Cameron Gillespie (LC2005-00597) wherein BILL  
16 HARPER gave sworn testimony on behalf of REDFLEX.

17 252. REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER, and Mr.  
18 DEGRAW knew that the photo speed enforcement citations sent to Daniel Gutenkauf through  
19 the mail by REDFLEX's back office citation program, on or about 09/03/2008, contained  
20 knowingly false representations, creating the false impression that the actual driver had been  
21 identified, in a fraudulent scheme and artifice for the purpose of obtaining money from him.

22 253. REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER, Mr.  
23 DEGRAW had specific knowledge of fraudulent, deliberately misleading traffic citations  
24 because the REDFLEX Procedures Manual for AZ DPS (April 2009) showed that Drivers  
25

1 License and Date of Birth were required to be filled in on the traffic ticket, and they had specific  
2 intent to use the mails in a fraudulent scheme to collect money by false pretenses, because they  
3 knowingly issued and mailed the traffic tickets based on only a gender match.

4 254. Redflex Custodian of Records BILL HARPER used the mails, with knowledge of  
5 fraudulent representation of the traffic ticket issued to Daniel Gutenkauf, certified by Officer  
6 COLOMBE on 09/02/2008, and Mr. HARPER had specific intent to commit mail fraud to  
7 collect money when he sent a court packet to Ms. GALLEGO , approximately 2 weeks before  
8 the first scheduled trial date in December 2008, to be used as evidence in court against Daniel  
9 Gutenkauf, when Mr. HARPER knew that there was no positive identification of the actual  
10 driver.

11 255. The court packet for Daniel Gutenkauf that Mr. HARPER mailed (or electronically  
12 wired) to the TEMPE POLICE DEPARTMENT contained the traffic ticket which made the (1)  
13 **representation** in the certification that Officer COLOMBE had “reasonable grounds” to believe  
14 that Daniel Gutenkauf was the actual driver of the vehicle alleged to have committed the  
15 speeding violation of A.R.S. 28-701 A.

16 256. The **representation** that Daniel Gutenkauf had been positively identified as the  
17 driver was (2) **false**, because the ticket did not contain the Date of Birth, or any information  
18 regarding Weight, Height, Eye color, Hair color, Origin, or Restrictions.

19 257. The false representation was (3) **material** because it had a tendency to influence the  
20 outcome of the court ‘s decision on 02/17/2009 to find Daniel Gutenkauf “Responsible” for the  
21 traffic offense, by creating the false representation that Officer COLOMBE actually had  
22 “reasonable grounds” for certification of the traffic ticket on 09/02/2008, and by creating the  
23 false representation that Daniel Gutenkauf had been positively identified as the actual driver, and  
24 by creating the false representation that the court had personal jurisdiction over Daniel  
25

1 Gutenkauf.

2 258. The false representation was also material because influenced Mr. Gutenkauf's  
3 behavior by causing him to defend against the ticket in court.

4 259. BILL HARPER had **(4) knowledge of its falsity** because in his sworn testimony, in  
5 two other traffic cases, he testified that the certifier/complainant does not see the complaint  
6 before the computer signs it and that no one compares the photo on the photo radar record with  
7 the photo on the putative defendant's driver's license (See Harper's sworn testimony in case of  
8 Craig Cameron Gillespie (LC2005-00597) and Stephen Thomas Palermo (LC2006-000235-001  
9 DT) (See **EXHIBIT E**, Appellant's Memorandum, Defendant's Exhibit B and Exhibit C, on  
10 page 2)

11 260. Both Mr. HARPER and Officer COLOMBE **(5) intended that the false represent-**  
12 **ation be acted on by the recipient**, Daniel Gutenkauf, because the traffic ticket was mailed to  
13 him by REDFLEX on or about 09/03/2008, with "reckless disregard" for whether the  
14 representation in the traffic ticket certification was true, with the intention to induce and compel  
15 Mr. Gutenkauf to respond to the ticket, by either paying the fine, or appearing in court.

16 261. The "reckless disregard" for whether the representation of the traffic ticket  
17 certification was true is supported by Appeals court judge Eartha K. Washington's ruling on  
18 10/06/2009 that "Officer Colombe had no idea what the appellant looked like and issued the  
19 ticket based on the fact that he is the registered owner of the vehicle and because the person  
20 captured in the photo was male."

21 262. Daniel Gutenkauf was **(6) ignorant of the falsity** of the representation (false  
22 certification on the traffic ticket) made by Officer COLOMBE and sent through the mail by  
23 REDFLEX to Mr.Gutenkauf, and also sent in the court evidence package to Ms.GALLEGO by  
24 Mr.HARPER.  
25

1        263. Daniel Gutenkauf **(7) relied on the truth** of the false certification by Officer  
2 COLOMBE, as shown by Plaintiff's appearance in court to challenge the ticket, his extensive  
3 research of case law on "reasonable and prudent speed", and his preparation of questions for  
4 cross-examination of the State's witness.

5        264. Daniel Gutenkauf had **(8) the right to rely on the representation** of Officer  
6 COLOMBE's certification of the Traffic ticket, because it was mailed under color of law and  
7 color of authority of TEMPE MUNICIPAL COURT, and the traffic ticket contained a warning  
8 of consequences for failure to respond to the ticket, such as default judgment, imposition of a  
9 fine, and suspension of driver's license.

10        265. Daniel Gutenkauf incurred **(9) a consequent and proximate injury** as a result of  
11 Officer COLOMBE's false certification, and Mr. HARPER's mailing of the ticket in the court  
12 package, because Daniel Gutenkauf was found responsible for the charge of "speed not  
13 reasonable and prudent" and he was fined \$197.00 by the court on 02/17/2009, as well as  
14 incurring an additional \$699.00 damage to challenge the court's ruling on appeal.

15        266. The predicate act of Mail Fraud, committed by REDFLEX employee HARPER,  
16 acting in concert with Ms. FINLEY and Mr. DEGRAW was an "overt act" used in the  
17 furtherance of a scheme or artifice to obtain money by false pretenses, which was "aided and  
18 abetted" by Officer COLOMBE, by his overt act of knowingly, deliberately and intentionally  
19 making a false certification of the traffic complaint (**A.R.S. 28-1561 B.** perjury) without any  
20 "reasonable basis" to believe Daniel Gutenkauf was the driver. ('Perjury for Profit')  
21

22        267. The predicate act of Mail Fraud, committed by REDFLEX TRAFFIC SYSTEMS  
23 employee HARPER, acting in concert with Ms. FINLEY and Mr. DEGRAW was used in the  
24 furtherance of a scheme or artifice to obtain money by false pretenses, and that act was "aided  
25 and abetted" by Traffic Enforcement Aide GALLEG0, by her overt act of testifying at Daniel

1 Gutenkauf's traffic hearing on February 17, 2009, that she had viewed the Photonotice video  
 2 before appearing in court, even though she knew that the driver had not been positively  
 3 identified, and that act was knowing, deliberate and intentional.

4 268. The predicate act of Wire Fraud, by REDFLEX TRAFFIC SYSTEM's use of  
 5 "Photonotice.com" over the Internet, was an overt act used in the furtherance of a scheme or  
 6 artifice to obtain money by false pretenses, which was "aided and abetted" by Judge BARSETTI,  
 7 by her "overt act" of finding Daniel Gutenkauf "Responsible" for the charge of "speed not  
 8 reasonable and prudent", even though she knew that the State had no evidence of Driver's  
 9 License photo I.D. to prove the identity of the actual driver, and that act was knowing, deliberate  
 10 and intentional with malice and evil intent.

## 12 COUNT II

### 13 **Predicate act of Wire Fraud, 18 USC 1343 using "Photonotice.com" transmission**

14 269. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 15 268 as though fully set forth herein.

16 270. Wire fraud, one of the predicate criminal acts for civil RICO under 18 USC 1961  
 17 is defined in **18 USC 1342 Fraud by wire, radio, or television:**

18 Whoever, having devised or intending to devise any scheme or artifice  
 19 to defraud, or for obtaining money or property by means of false or  
 20 fraudulent pretenses, representations, or promises transmits or causes  
 21 to be transmitted by means of wire, radio, or television communication  
 22 in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds  
 for the purpose of executing such scheme or artifice, shall be fined under this title  
 or imprisoned not more than 20 years, or both.

23 271. Defendants REDFLEX TRAFFIC SYSTEMS, INC., Ms. FINLEY, Mr. HARPER  
 24 and Mr. DEGRAW devised a scheme or artifice to defraud and for obtaining money by means of  
 25 false or fraudulent pretenses and representations, by causing a video (wire communication) to be

1 transmitted over the internet on 10/22/2008 of Daniel Gutenkauf's vehicle at 200 S. Rural Road  
2 through a program called "Photonotice.com". (See **EXHIBIT V**, still photo of video)

3 272. The video transmission on 10/22/2008 listed the license plate number 386WCD and  
4 the name DANIEL ARTHUR GUTENKAUF, and it showed a stationary Face Image of a driver  
5 wearing sunglasses in the upper right hand corner of the video transmission. (See **EXHIBIT V**)

6 273. Defendants REDFLEX TRAFFIC SYSTEMS, INC., through the participation of its  
7 employees Ms. FINLEY, Mr. HARPER and Mr. DEGRAW who "aided and abetted" such  
8 fraudulent scheme or artifice, used the 10/22/2009 Photonotice video transmission of Daniel  
9 Gutenkauf's vehicle, License Plate number and a Face Image taken on August 19, 2008, to make  
10 the **(1) representation** that the driver in the video and picture had been positively identified, in  
11 the furtherance of a scheme to defraud and obtain money by false pretenses.

12 274. The representation in the Photonotice.com video transmission was **(2) false** because  
13 the Redflex system only does a gender match, as shown in its own Procedures Manual for  
14 issuing traffic citations, and Ms. GALLEGO testified on 2/17/2009 that Officer COLOMBE did  
15 not have a copy of Daniel Gutenkauf's driver's license photo I.D. to compare to the Redflex face  
16 image at the time the speeding ticket citation was certified on 09/02/2008.

17 275. The false representation promulgated by REDFLEX TRAFFIC SYSTEMS, INC.,  
18 through the conduct and management of CEO KAREN FINLEY, "aided and abetted" by  
19 REDFLEX employees HARPER and DEGRAW was **(3) material** because it had a tendency to  
20 influence the outcome of the court's decision on 02/17/2009 to find Daniel Gutenkauf  
21 "Responsible" for the traffic offense, and Ms. GALLEGO testified that she viewed that video  
22 evidence prior to her testimony in court.

23 276. REDFLEX TRAFFIC SYSTEMS, INC., through the participation of its employees  
24 FINLEY, HARPER and DEGRAW **(4) had knowledge of the falsity** of the representation  
25

1 impression in the video transmission because the Redflex Procedures Manual for issuing traffic  
2 citations shows that it recommends approving citations based only on a gender match.

3 277. REDFLEX TRAFFIC SYSTEMS, INC., through the participation of its employees  
4 FINLEY, HARPER and DEGRAW **(5) intended that the false representation be acted on by**  
5 **Daniel Gutenkauf** because there was reckless disregard for the truth of the representation that  
6 the driver had been properly identified.

7 278. Daniel Gutenkauf was **(6) ignorant of the falsity** of the video representation that the  
8 actual driver had been positively identified, because he did not discover until his court date on  
9 02/17/2008 that Officer Colombe had no Driver's License photo I. D. to compare to the Redflex  
10 photo, as testified by Ms. GALLEGO.

11 279. Daniel Gutenkauf **(7) relied on the truth of the video representation** in the  
12 Photonotice.com video transmission of 10/22/2008, as shown by his appearance in court to  
13 challenge the ticket, his extensive research of case law on "reasonable and prudent speed", and  
14 his preparation of questions for cross-examination of the State's witness.

15 280. Daniel Gutenkauf had **(8) a right to rely on the video representation** in the  
16 Photonotice.com video transmission because it was referenced on page 5 of the "PERSONAL  
17 SERVICE" copy of the Arizona Traffic Ticket and Complaint, issued by Tempe Municipal  
18 Court, with the Instruction **"NOTE: The violation has been captured on video and is available**  
19 **for 120 days from the date of the violation. The video can be viewed on the Internet at**  
20 **www.photonotice.com. Enter City Code: TMPAZ". (See EXHIBIT M)**  
21

22 281. Upon information and belief, the Redflex/Photonotice video/wire communication  
23 utilized an Internet web site, which was reasonably foreseeable that it would involve interstate  
24 communications and/or transmission in interstate commerce, since the Photonotice program is  
25 used nationwide by Redflex in other states, and in conjunction with various other Redflex web-

1 based systems such as Online Reports, SMARTops, and WebOps programs, which are accessed  
2 via the Internet.

3 282. Upon information and belief, the City of Tempe has also accessed DMV photos  
4 and driver registration information via Image Ware Systems, Inc., based in San Diego, CA,  
5 which involves wire communications across states, as well as NLETS, which is an interstate  
6 law enforcement agency providing MVD information for all 50 States via the Internet, which is  
7 inexorably intertwined with interstate commerce.

8 283. Traffic Enforcement Aide BIANCA GALLEGO testified on 02/17/2009 that she had  
9 viewed the Photonotice video prior to attending court, and her testimony of the false represent-  
10 ation created by the video transmission caused a consequent and proximate injury to Daniel  
11 Gutenkauf, because he was found “ Responsible” for the charge of “speed not reasonable and  
12 prudent” and he was fined \$197.00 by the court on 02/17/2009, as well as incurring an additional  
13 \$699.00 damage to challenge the court’s ruling on appeal.

14 284. The predicate act of Wire Fraud, committed sometime around October 22, 2009 by  
15 an unknown REDFLEX employee (to be revealed upon discovery), and used in the furtherance  
16 of a scheme or artifice to obtain money by false pretenses, was “aided and abetted” by Officer  
17 COLOMBE, by his overt act of falsely certifying the traffic complaint without any “reasonable  
18 basis” to believe Daniel Gutenkauf was the driver, and that act by Officer COLOMBE was  
19 knowing, deliberate, and intentional.  
20

21 285. The predicate act of Wire Fraud, committed sometime around October 22, 2009 by  
22 an unknown REDFLEX employee, and used in the furtherance of a scheme or artifice to obtain  
23 money by false pretenses, was “aided and abetted” by Ms.GALLEGO, by her” overt act” of  
24 testifying On 2/17/2009 that she viewed the Photonotice video, even though she knew that the  
25 driver had not been positively identified, and that overt act by Ms.GALLEGO was knowing,



1 deliberate and intentional.

2 286. The predicate act of Wire Fraud, committed on around October 22, 2009 by an  
 3 unknown REDFLEX employee, and used in the furtherance of a scheme or artifice to obtain  
 4 money by false pretenses, was "aided and abetted" by Judge BARSETTI, on 2/17/2009 by her  
 5 "overt act" of finding Daniel Gutenkauf "Responsible" for the charge of "speed not reasonable  
 6 and prudent", even though she knew that the State had no evidence of Driver's License photo  
 7 I.D. to prove the identity of the actual driver, and that overt act by Judge BARSETTI was  
 8 knowing, deliberate and intentional with malice.

### 9 COUNT III

#### 10 **RICO Predicate act of Extortion, A.R.S. 13-804 A. (7) & (8), 18USC 1951 (b)(2)** 11 **Use of fear and threat to suspend Driver's License and impose fine**

12 287. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 13 286 as though fully set forth herein.

14 288. Racketeer Influenced and Corrupt Organization Act (RICO) prohibits extortion as  
 15 defined by both federal and state statute.

16 289. **A. R.S. 13-1804, Theft by extortion** provides in section A. A person commits theft  
 17 by extortion by knowingly obtaining *or seeking to obtain property* or services by means of a  
 18 threat to do in the future any of the following:  
 19

- 20 1. Cause physical injury to anyone by means of a deadly weapon or dangerous  
 21 Instrument.
- 22 2. Cause physical injury to anyone except as provided in paragraph 1 of this  
 23 Subsection.
- 24 3. Cause damage to property.
- 25 4. Engage in other conduct constituting an offense
5. Accuse anyone of a crime or bring criminal charges against anyone.

6. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule or to impair the person's credit or business.

7. *Take or withhold action as a public servant or cause a public servant to take or withhold action.*

8. *Cause anyone to part with any property.*

290. THE STATE OF ARIZONA and the CITY OF TEMPE, in conjunction with the TEMPE POLICE DEPARTMENT and its employees Officer COLOMBE, Ms.GALLEGRO, TEMPE CITY COURT and *private independent contractor* Judge BARSETTI, engaged in a conspiracy to commit theft by extortion against Plaintiff under A.R.S. 13-1804 A. (7) and (8).

291. The State actors and City of Tempe Defendants were "aided and abetted" by Defendants REDFLEX TRAFFIC SYSTEMS, INC., through its employees Ms.FINLEY, Mr. HARPER, AND Mr. DEGRAW, who devised a scheme or artifice with *intent to defraud* and to obtain money by the use of fear, threatening to enter a default judgment, impose a civil fine, and suspend the drivers license of Daniel Gutenkauf (and other alleged violators)," aided and abetted" by the AZ ADOT Motor Vehicle Division, under the direction of JOHN HALIKOWSKI, by the threat of losing a property interest for failure to appear as directed in the civil traffic complaint, as expressly stated in the last bullet point paragraph at the bottom of page 3 of the copy of "PERSONAL SERVICE" of the Arizona Traffic Ticket and Complaint.

#### **CITY OF TEMPE IS AN "ENTERPRISE" UNDER RICO DEFINITION**

292. Under 18 USC 1961 Definitions, an enterprise is defined in section (4)"enterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity.

293. Defendant CITY OF TEMPE., is an "enterprise" engaged in and the activities of

1 which affect interstate commerce and foreign commerce, to wit: a municipal corporation  
 2 incorporated under the laws of the STATE OF ARIZONA which engages in both interstate and  
 3 foreign commerce, through commerce and transactions, including but not limited to, the Tempe  
 4 Convention and Visitors Bureau, which is listed on its website at [www.tempe.gov/visitors.aspx](http://www.tempe.gov/visitors.aspx).

5 294. Defendant CITY OF TEMPE is an “enterprise” engaged in and the activities of  
 6 which affect interstate or foreign commerce, to wit: Officer COLOMBE, Ms. GALLEG0, Judge  
 7 BARSETTI, are a group of individuals employed by the CITY OF TEMPE, who have willingly  
 8 and knowingly agreed to a common purpose to obtain money by means of false pretenses, by  
 9 engaging in a scheme or artifice to defraud, by knowingly and intentionally using the mails to  
 10 send false certifications of traffic citations, based only on gender matches of photos and vehicle  
 11 registration information, without having identified the actual driver, as required by law under  
 12 A.R.S. 28-1561 A, and engaging in at least two predicate criminal acts constituting a “pattern  
 13 of racketeering”, in violation of 18 U.S.C.1962(c) (civil RICO), and in violation of 18 U.S.C.  
 14 1341, Mail Fraud, 18 U.S.C. 1343, Wire Fraud, and 18 U.S.C. 1951(b)(2), Extortion and  
 15 A.R.S. 13-1804 A (7) and (8) Theft by Extortion.

16 295. Title 18 USC 1962 Definitions defines a “person” in section (3) as “person”  
 17 includes any individual or entity capable of holding a legal or beneficial Interest in property.

18 296. Defendants COLOMBE, GALLEG0, and BARSETTI, as “persons” within the  
 19 meaning of 18 U.S.C.1961(3), received income derived, directly or indirectly, from a “pattern of  
 20 racketeering activity”, by committing overt at least two acts of mail fraud, wire fraud and  
 21 extortion, in violation of 18 USC 1962(c) in a continuous and ongoing scheme to defraud in  
 22 order to obtain money by false pretenses.

23 **STATE OF ARIZONA IS AN “ENTERPRISE” UNDER RICO DEFINITION.**

24 297. THE STATE OF ARIZONA is an “enterprise” engaged in and the activities of

1 which affect interstate commerce such as tourism, banking, and insurance, to wit: a corporation  
 2 incorporated under the laws of the STATE OF ARIZONA.

3 298. THE STATE OF ARIZONA is an “enterprise” engaged in and the activities of  
 4 which affect interstate or foreign commerce, to wit: Attorney General GODDARD, former DPS  
 5 Director VANDERPOOL, and current ADOT Director HALIKOWSKI, were/are a group of  
 6 individuals employed by the STATE OF ARIZONA, who willingly and knowingly agreed to a  
 7 common purpose to obtain money by means of false pretenses, by engaging in a scheme or  
 8 artifice to defraud, by knowingly and intentionally using the mails to send false certifications of  
 9 traffic citations, based only on gender matches of photos and vehicle registration information,  
 10 without having positively identified the actual driver as the person who committed the traffic  
 11 offense, as required by law under A.R.S. 28-1561 A, and by engaging in two or more predicate  
 12 criminal acts constituting a “pattern of racketeering”, in violation of 18 U.S.C.1962(c) (civil  
 13 RICO), and in violation of 18 U.S.C. 1341, Mail Fraud, 18 U.S.C. 1343, Wire Fraud, and 18  
 14 U.S.C. 1951(b)(2), Extortion and A.R.S. 13-1804 A (7) and (8) Theft by Extortion.

#### 16 COUNT IV

#### 17 18 U.S.C. 1962(d), Conspiracy to violate 18 U.S.C. 1962(c) and 1964

18 299. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 19 298 as though fully set forth herein.

20 299. According to Arizona Attorney General GODDARD, in AG Opinion No. I10-  
 21 001(R09-027), under the statutes governing photo enforcement, the regulation and oversight of  
 22 the vendor, (in this case, REDFLEX) through the contracting process with the Department of  
 23 Public Safety protects the public.

24 300. Defendant VANDERPOOL, Director of Arizona Department of Public Safety at the  
 25 time of the events described herein, knew or should have known that vendor REDFLEX

1 TRAFFIC SYSTEMS INC. and DPS were using the mail in furtherance of a scheme to defraud,  
2 because the REDFLEX Procedures Manual Instructions to DPS clearly stated that both Driver's  
3 License and Date of Birth *are required* to issue traffic citations, but nevertheless the same  
4 Redflex Procedures Manual for DPS recommended and approved issuing traffic citations which  
5 were based only on a *gender match of the registered owner of the vehicle*, and without any  
6 "reasonable basis" to believe that the person named in the traffic citation was the *actual driver*.

7  
8 3051 Former DPS Director VANDERPOOL also knew that REDFLEX and the  
9 ARIZONA DEPARTMENT OF PUBLIC SAFETY were using the mail in furtherance of a  
10 scheme to defraud, because Lieutenant Jeff King, DPS spokesman, had made a public statement  
11 in the Arizona Republic newspaper that Arizona is a "driver responsibility state" and that DPS  
12 Officers have to match the photo of the speeder with the one on a driver's license. (See AZ  
13 Republic news article May 15, 2009 "Close to two-thirds of photos taken by speed cameras  
14 tossed")

15 302. The ARIZONA DEPARTMENT OF TRANSPORTATION has the duty to enforce  
16 motor vehicle statues and related functions, pursuant to **A.R.S. 28-332 B. 1.**, and the Motor  
17 Vehicle Division is assigned to carry out those responsibilities, pursuant to **ARS 28-332 C. 1.**

18 303. Defendant JOHN HALIKOWSKI, Director of Arizona Department of Transport-  
19 ation, knew or should have known from the REDFLEX Procedures Manual, that vendor  
20 REDFLEX TRAFFIC SYSTEMS INC. and DPS were using the mail in furtherance of a scheme  
21 to defraud, because the REDFLEX Procedures Manual Instructions to DPS clearly stated that  
22 both Driver's License and Date of Birth *are required* to issue traffic citations, but the same  
23 Redflex Procedures Manual for DPS recommended and approved issuing traffic citations which  
24 were based only on a *gender match of the registered owner of the vehicle*, and without any  
25 "reasonable basis" to believe that the person named in the traffic citation was the *actual driver*.

1           304. Attorney General GODDARD knew or should have known that vendor REDFLEX  
2 TRAFFIC SYSTEMS INC. and DPS were using the mail in furtherance of a scheme to defraud,  
3 because the REDFLEX Procedures Manual Instructions to DPS clearly stated that both Driver's  
4 License and Date of Birth *are required* to issue traffic citations, but nevertheless the same  
5 Redflex Procedures Manual for DPS recommended and approved issuing traffic citations which  
6 were based only on a *gender match of the registered owner of the vehicle*, and without any  
7 "reasonable basis" to believe that the person named in the traffic citation was the *actual driver*.  
8

9           305. Pursuant to **A.R.S. 28-333**, the Attorney General is the legal advisor to the Arizona  
10 Department of Transportation (ADOT).  
11

12           306. Attorney General GODDARD, as legal advisor to both ADOT and DPS, had a duty  
13 to instruct those agencies to strictly follow **A.R.S. 28-1561A**, by making a positive identification  
14 of the driver, prior to issuing traffic citations for photo speed enforcement violations.  
15

16           307. Attorney General GODDARD ratified and recklessly tolerated the unlawful conduct  
17 of REDFLEX and its employees, who were under the supervision of DPS, by allowing them to  
18 continue issuing traffic citations without positively identifying the actual driver, and then using  
19 the mails in furtherance of a fraudulent scheme or artifice to obtain money by false pretenses.  
20

21           308. Defendants DAVIE, FINLEY, HARPER, and DEGRAW, as "persons" within the  
22 meaning of **18 U.S.C. 1961(3)** and as persons employed by/associated with said enterprise  
23 (REDFLEX), conducted and participated, directly and indirectly, in the conduct of the affairs of  
24 said enterprise through a pattern of racketeering activity, in violation of **18 U.S.C. 1962 (c)**.  
25

26           309. REDFLEX TRAFFIC SYSTEMS, INC., acting through the participation and  
27 conduct of its CEO FINLEY, Director DAVIE, and employees Mr. HARPER, and Mr.  
28 DEGRAW, and acting in concert with Officer COLOMBE, committed at least seven predicate  
29 criminal acts, constituting a "pattern of racketeering".  
30

1           310. Upon information and belief, the first predicate criminal act, Wire Fraud, occurred  
2           sometime after 08/19/2008 when the Redflex photo and video were recorded at 200 S. Rural in  
3           Tempe, and an encrypted Notice of Violation was sent by REDFLEX over the internet to the  
4           TEMPE POLICE DEPARTMENT for approval by Officer COLOMBE, although no positive  
5           I.D. of the driver had been made, in furtherance of a scheme to defraud and obtain money by  
6           false pretenses.

7           311. Upon information and belief, the second predicate criminal act, Wire Fraud, occur-  
8           ed on 09/02/2008, when Officer COLOMBE falsely certified the traffic ticket violation for  
9           Daniel Gutenkauf, without positive identification of the driver, and the perjured certification was  
10          resent over the Internet back to the citation office of REDFLEX TRAFFIC SYSTEMS, INC. in  
11          Scottsdale, Arizona, in a scheme to defraud and obtain money by false pretenses.

12          312. Upon information and belief, the third predicate criminal act, Mail Fraud, occurred  
13          on 09/03/2008, when an unknown REDFLEX employee (to be revealed during discovery) know-  
14          ingly, deliberately and intentionally used the United States Postal Service to deliver the falsely  
15          certified traffic citation to Daniel Gutenkauf, in a scheme to defraud and obtain money from him  
16          by false pretenses.

17          313. Upon information and belief, the fourth predicate criminal act, Theft by Extortion  
18          (A.R.S. 13-1804 -A.7. and A.8) occurred when the falsely certified notice of traffic violation was  
19          mailed to Daniel Gutenkauf on 9/03/2008, and that notice used fear by means of a written threat  
20          to enter a default judgment, impose a civil fine, and suspend Daniel Gutenkauf's driver's license,  
21          if he did not send \$197.00 to TEMPE MUNICIPAL COURT, in furtherance of a fraudulent  
22          scheme to obtain money by false pretenses.

23          314. Upon information and belief, the fifth predicate criminal act, Wire Fraud/Mail  
24          Fraud, occurred on or about approximately 09/03/2008, when an unknown REDFLEX Employee  
25

1 (to be disclosed during discovery) sent the Notice of Violation for Daniel Gutenkauf to the  
2 TEMPE CITY COURT, either electronically or using the mails, in a scheme to defraud and  
3 obtain money by false pretenses.

4 315. Upon information and belief, the sixth predicate criminal act, Wire Fraud, occurred  
5 sometime between 09/03/2008 and October 22, 2008, when REDFLEX TRAFFIC SYSTEMS  
6 INC., through one of its employees (to be disclosed during discovery), transmitted Video over  
7 the Internet, via Photonotice.com, showing a vehicle registered to Daniel Gutenkauf traveling  
8 northbound near 200 S. Rural, listing his License Plate number, and transmitting a facial image  
9 of the driver, without having made positive I.D. of the actual driver, creating a false represent-  
10 ation, in furtherance of a scheme to defraud and obtain money by false pretenses.

11 316. Upon information and belief, the seventh predicate criminal act, Mail Fraud/Wire  
12 Fraud, occurred approximately two weeks prior to Daniel Gutenkauf's first scheduled court  
13 appearance at Tempe Municipal Court in December, 2008, when Redflex Records Custodian  
14 BILL HARPER sent the court package to Ms. GALLEG0, either electronically over the Internet,  
15 or by use of the mails through the U.S. Postal Service, in furtherance of a scheme to defraud and  
16 obtain money by false pretenses.

17 317. Upon information and belief, in a Tempe News article dated May 12, 2010, titled  
18 "Flashing warning lowers Tempe photo tickets", it is reported that an *Arizona Republic*  
19 newspaper review in 2009 showed that more than 50,000 citations for speeding were issued in  
20 2008 from the camera on Rural south of Rio Salado, accounting for more than half of Tempe's  
21 photo enforcement tickets.

22 318. Statistics showing more than 50,000 citations for speeding at 200 S. Rural Rd in  
23 Tempe, using a system which does not properly identify the actual driver, indicates that over  
24 50,000 predicate acts of Mail Fraud and Extortion, which constitute a "pattern of racketeering  
25



1 activity” within the meaning of **18 U.S.C. 1961(5)**.

2 319. Plaintiff Daniel Arthur Gutenkauf was *injured in his property* by reason of violation  
 3 of **18 U.S.C.1962(c)** by REDFLEX TRAFFIC SYSTEMS INC., CEO FINLEY, Director  
 4 DAVIE, Mr. HARPER, Mr. DEGRAW, acting in concert with Defendants CITY OF TEMPE,  
 5 TEMPE POLICE DEPARTMENT, Officer COLOMBE, Ms. GALLEGO, Judge BARSETTI,  
 6 Attorney General GODDARD, former DPS Director VANDERPOOL, and ADOT Director  
 7 HALIKOWSKI, in that, as a direct and proximate result of Defendant’s complained of acts,  
 8 Plaintiff suffered damages, including \$197.00 fine, \$147.00 appellate court filing fee, \$485.00  
 9 cost of trial transcript by a court approved transcriber, and miscellaneous costs for legal research  
 10 for his appeal.

12 320. By reason of the violation of **18 U.S.C. 1962 (c) and (d)** by Defendants REDFLEX  
 13 TRAFFIC SYSTEMS INC., REDFLEX HOLDINGS LTD., FINLEY, DAVIE, HARPER, AND  
 14 DEGRAW, acting in concert with CITY OF TEMPE, TEMPE POLICE DEPARTMENT,  
 15 Officer COLOMBE, Ms. GALLEGO, Judge BARSETTI, Judge ARKFELD, AAA PHOTO  
 16 SAFETY INC., Mr. PICKRON, Mr. ARNETT, Attorney General GODDARD, Mr.  
 17 VANDERPOOL, and Mr. HALIKOWSKI, Plaintiff is entitled, pursuant to **18 U.S.C. 1964(c)**, to  
 18 threefold the damages sustained from each of the named Defendants, the amount to be  
 19 determined at trial, with interest thereof at 10 % percent per annum, (and a reasonable attorney’s  
 20 fee if applicable) in connection herewith.

22 321. Defendant CITY OF TEMPE., is an “enterprise” engaged in and the activities of  
 23 which affect interstate commerce, such as tourism, banking, and insurance, to wit: a corporation  
 24 incorporated under the laws of the STATE OF ARIZONA.

25 322. Defendant CITY OF TEMPE, is an “enterprise” engaged in and the activities of  
 which affect interstate or foreign commerce, to wit: TEMPE POLICE DEPARTMENT, Officer

1 COLOMBE, Ms. GALLEGO, Lt. JOHNSON, are a group of individuals employed by the CITY  
2 OF TEMPE, engaged in a scheme the common purpose to generate revenue by photographing  
3 motor vehicles and license plates, by obtaining motor vehicle registration information from the  
4 Motor Vehicle Division of the ARIZONA DEPARTMENT OF TRANSPORTATION, and by  
5 making gender matches of photos and registration information, by sending false certifications  
6 through the United States Postal Service, in order to collect money by means of a fraudulent  
7 scheme or artifice.

8  
9 323. Defendants Officer COLOMBE, Ms. GALLEGO, Judge BARSETTI, ARKFELD,  
10 RODRIGUEZ, SEYLER, McALLISTER, HALLMAN, NAVARRO, ARREDONDO, ELLIS,  
11 SHERJERKIAN, WOODS, MITCHELL, MEYER, HORT, GREENE, as "persons" within the  
12 meaning of 18 U.S.C. 1961(3) and as persons employed by/associated with said enterprise  
13 (CITY OF TEMPE), conducted and participated, directly and indirectly, in the conduct of the  
14 affairs of said enterprise through a pattern of racketeering activity in violation of 18 U.S.C. 1962  
15 (c). and engaged in a conspiracy to violate 18 USC 1962 (c).

16 324. On Saturday, October 2, 2010, Plaintiff received a letter from MICHAEL GREENE,  
17 stating that the CITY OF TEMPE was unable to locate the remaining two documents requested  
18 two weeks earlier, and that the employees who had assisted in this search had no recollection of  
19 having received those documents, and were unable to locate them in their search. (See **EXHIBIT**  
20 **S**)

21  
22 325. The letter from Mr. GREENE , dated September 29, 2010 and postmarked on Oct. 1,  
23 2010 created the false impression that the CITY OF TEMPE had never received either the  
24 Redflex Procedures Manual for Citations or the Court Training Packet and it appears it was  
25 intended to deceive Plaintiff in that regard.

326. Plaintiff Gutenkauf had previously obtained a copy of Redflex Procedures Manual

1 for DPS and for City of Tempe AZ, revised as of April, 2009, through an online source several  
2 months earlier at Camerafraud.com.

3 327. It *appears* that MICHAEL GREENE may have knowingly and intentionally  
4 *attempted to commit Mail Fraud (18 USC 1341)* by sending his letter to Plaintiff on Oct. 1,  
5 2010.

6 328. It *appears* that MICHAEL GREENE knowingly and intentionally attempted to  
7 impair the availability of two public records, in violation of A.R.S. 13-2407, (Tampering with a  
8 public record) whereby section A. provides that “A person commits tampering with a public  
9 record if, with the intent to defraud or deceive, such person knowingly: (section 4) Destroys,  
10 mutilates, conceals, removes, or otherwise impairs the availability of a public record.  
11

12 329. THE STATE OF ARIZONA., is an “enterprise” engaged in and the activities of  
13 which affect interstate commerce, to wit: a corporation incorporated under the laws of the  
14 STATE OF ARIZONA which engages in interstate and foreign commerce through its  
15 main industry, namely tourism, as well as banking and insurance,

16 330. THE STATE OF ARIZONA, is an “enterprise” engaged in and the activities of  
17 which affect interstate or foreign commerce, to wit: TERRY GODDARD, ROGER  
18 VANDERPOOL, and JOHN HALIKOWSKI are a group of individuals associated in fact for the  
19 common purpose to generate revenue for the STATE OF ARIZONA by photographing motor  
20 vehicles and license plates, by obtaining motor vehicle registration information from the Motor  
21 Vehicle Division of the ARIZONA DEPARTMENT OF TRANSPORTATION, and by making  
22 gender matches of photos and registration information, and by sending false certifications  
23 through the United States Postal Service, in order to collect money by means of a fraudulent  
24 scheme and artifice.  
25

331. Defendants GODDARD, VANDERPOOL, and HALIKOWSKI as “persons”

1 within the meaning of **18 U.S.C. 1961(3)** and as persons employed by/associated with said  
2 enterprise (THE STATE OF ARIZONA), conducted and participated, directly and indirectly, in  
3 the conduct of the affairs of said enterprise through a pattern of racketeering activity in violation  
4 of **18 U.S.C. 1962 (c)**.

5 332. Upon information and belief, according to the Arizona Republic newspaper article  
6 titled: "IS IT REALLY THE END?; Speed cameras might not really be gone for good", dated  
7 Sunday June 13, 2010, REDFLEX speed cameras have snapped more than 2 million photos,  
8 within a period of ten years, from September 2008 through March 2010, whereby about 30  
9 percent of citations issued and mailed by DPS and/or REDFLEX were paid.  
10

11 333. Based upon information and belief, 2 million photo enforcement citations sent by  
12 DPS and/or REDFLEX through the U.S. Postal service, using a procedure that does not identify  
13 the actual driver of the vehicle, indicates 2 million predicate acts of Mail Fraud and Extortion,  
14 within a period of ten years, from September 2008 through March 2010, constituting a "pattern  
15 of racketeering activity", in violation of **18 U.S.C. 1962 (c)**.

16 334. Upon information and belief, based on a report from the State of Arizona Office of  
17 the Auditor General, dated January 19, 2010, The ARIZONA DEPARTMENT OF PUBLIC  
18 SAFETY's photo enforcement vendor (REDFLEX) is responsible for collecting and reporting  
19 violation data.  
20

21 335. Upon information and belief, based on a report from the State of Arizona Office of  
22 the Auditor General, dated January 19, 2010, REDFLEX TRAFFIC SYSTEMS, INC. received  
23 \$4.6 million dollars from the DEPARTMENT OF PUBLIC SAFETY through the Arizona Photo  
24 Enforcement Fund, provided under **A.R.S. 41-1722**.

25 336. **A.R.S. 41-1722 C.** specifies that the Director of the Department of Public Safety  
shall administer the Photo Enforcement Fund.

337. Based upon information and belief, according to the minutes of the Tempe City Council, dated April 9, 2009, Mayor HALLMAN cited that 84% of the fines paid for photo enforcement tickets issued in the CITY OF TEMPE go to the State of Arizona. ( **EXHIBIT P** )

338. Upon information and belief, on 7/1/2010, the Tempe City Council made a recommendation to approve an additional one year contract with REDFLEX TRAFFIC SYSTEMS, INC., thereby showing that the predicate RICO acts have "*continuity*" of the racketeering activities by the enterprise and the racketeering acts are "*related*" to one another in their pattern and purpose, employing the same participants.

339. Although the Department of Public Safety discontinued its contract with REDFLEX TRAFFIC SYSTEMS INC, as of 7/15/2010, the STATE OF ARIZONA continues to receive money into the State Photo Enforcement fund under A.R.S. 41-1722 C., from the CITY OF TEMPE's ongoing Photo Enforcement program with REDFLEX, and those funds are administered by the Director of DPS, thereby showing *continuity* of the racketeering activities of the enterprise and their *relationship* to one another, and the *threat* of continued activity if DPS takes over the State program, as implicated by DPS lobbying the State Legislature two days before announcing termination of the Redflex contract.

#### **PRAYER FOR RELIEF**

Plaintiff has no adequate and sufficient post deprivation remedy available at law with which to address the wrongs alleged herein and will continue to suffer irreparable injury from the conduct of Defendants unless he is granted equitable relief prayed for herein.

WHEREFORE, Plaintiff prays for judgment against Defendants HALLMAN, NAVARRO, ARREDONDO, ELLIS, SHERJERKIAN, WOODS, MITCHELL, MEYER, HORT, GREENE, McALLISTER, RODRIGUEZ, SEYLER, Chief RYFF, Officer COLOMBE, MS. GALLEGOS, Judge BARSETTI, Judge ARKFELD, DAVIE, FINLEY, HARPER, DEGRAW, BERNARD,

PICKRON, ARNETT, Attorney General GODDARD, Mr. VANDERPOOL, and ADOT  
Director HALIKOWSKI and each of them, as follows:

1. For threefold the damages actually sustained and the costs of the suit, to be paid in U.S. Dollars, a U.S. Dollar will be defined as one ounce silver coin of .999 fine silver, pursuant to the Coinage Act of 1792, or the equivalent par value in gold coins, including a reasonable attorney's fee, pursuant to 18 U.S.C. 1964(c) with interest thereon at the rate of ten percent (10%) per annum;
2. For such other and further relief as the Court may deem appropriate pursuant to 18 U.S.C. 1964;
3. For such other and further relief as the Court may deem proper and just in the premises.
4. Injunctive relief by preventing and restraining further violations of 18 U.S.C 1962 and 18 U.S.C. 1964(a)-(d), and declaratory relief as may be required in the interest of justice
5. Demand for trial by jury on all issues so triable.

**CAUSE OF ACTION #3:  
ACTION FOR DAMAGES DUE TO A CONSPIRACY**

340. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 339 as though fully set herein.

341. **Conspiracy**, n. An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement; a combination for an unlawful purpose. 18 USC 371

*Black's Law Dictionary, Ninth Edition*

342. **Chain conspiracy** A single conspiracy in which each person is responsible for a distinct act within the overall plan, such as an agreement to produce, import

and distribute narcotics in which each person performs only one function. All participants are interested in the overall scheme and liable for all other participants' acts in furtherance of that scheme. *Black's Law Dictionary, Ninth Edition*

(See **EXHIBIT U**, Plaintiff's visual depiction of the "*chain*" theory of conspiracy)

343. In the Minutes of Tempe City Council meeting on April 9, 2009, City Manager CHARLIE MEYER summarized that the Photo Enforcement Program is a cooperative effort between the Courts, the Police Department, and Traffic Engineering, which includes Tempe Traffic Engineer SHELLY SEYLER. (See **EXHIBIT P**)

344. Officer COLOMBE's signature (false certification) on the traffic complaint is the evidence of an overt act in the furtherance of the conspiracy to obtain money by false pretenses, which resulted in financial damage to Daniel Gutenkauf, and Mr. COLOMBE knew that the purpose and methods used were unlawful, and he agreed to be part of the conspiracy.

345. BIANCA GALLEGRO's appearance as a substitute witness for Officer COLOMBE at the civil traffic hearing in TEMPE MUNICIPAL COURT on February 17, 2009, and her testimony, based on Officer Colombe's false certification on the traffic complaint, was "an overt act" in the furtherance of the conspiracy,

346. Ms. GALLEGRO understood and agreed to the conspiracy to obtain money by false pretenses, without positive ID of Mr. Gutenkauf as the actual driver, and she knew that the purpose and method of testimony was unlawful, and that it would result in financial injury to him.

347. BILL HARPER understood and agreed to the conspiracy between REDFLEX and the CITY OF TEMPE to obtain money by false pretenses, without positive ID of Mr. Gutenkauf as the actual driver, and he knew that the purpose and method of testimony was unlawful, because in the cases of Craig Cameron Gillespie (LC2005-000597-001 DT) and Stephen Thomas

1 Palermo IV (LC2006-000235-001 DT), the appeals court overturned the convictions in the trials  
2 where HARPER testified that there was no comparison of driver's license photo ID.

3 348. Mr. HARPER, as REDFLEX custodian of records, committed the over act of  
4 collecting records (Exhibits #1 through #6) for trial and supplying those records to Ms.  
5 GALLEG0, without positive ID of the driver, and he knew that it would result in financial injury  
6 to Mr. Gutenkauf.

7 349. MATTHEW DEGRAU understood and agreed to the conspiracy to obtain money  
8 by false pretenses, and his constructing and signing of the camera test records, for the court  
9 evidence package used against Mr. Gutenkauf, was an overt act in the furtherance of the  
10 conspiracy and he knew that it would result in financial injury to him.

11 350. At Daniel Gutenkauf's civil traffic hearing on 2/17/2009, Ms. GALLEG0 testified  
12 that REDFLEX requested information from MVD, did a gender match and a match of regis-  
13 tration, and sent the computer generated citation through the mail.

14 351. Ms.GALLEG0 testified that REDFLEX retrieves the license plate and registration  
15 information from MVD, but does not have any drivers license to compare to the REDFLEX  
16 photo. (page 28, lines 2-25 of trial transcript).

17 352. Judge BARSETTI understood and agreed to the conspiracy between REDFLEX and  
18 the CITY OF TEMPE to obtain money by false pretenses, without positive ID of Mr. Gutenkauf  
19 as the actual driver, and she knew that the purpose and method of testimony by Ms.GALLEG0  
20 was unlawful.

21 353. Judge BARSETTI's acceptance of the REDFLEX exhibits #1 through #6 on 2-17-  
22 09, in spite of Mr.Gutenkauf's objection that the exhibits were not authenticated or based on  
23 personal knowledge, was an overt act in the furtherance of the conspiracy to obtain money  
24 by false pretenses.  
25



1        354. Ms. BARSETTI's ruling on 2-17-2009, finding Mr. Gutenkauf "Responsible" for a  
2 violation of **A.R.S.28-701 A**, was an overt act in the furtherance of the conspiracy, which caused  
3 financial injury to Mr. Gutenkauf.

4        355. The retrieval of license plate information by REDFLEX TRAFFIC SYSTEMS  
5 cameras, and then contacting MVD for information on the registered owner of the vehicle  
6 belonging to Mr. Gutenkauf, were overt acts in the furtherance of the conspiracy to obtain money  
7 by false pretenses without having identified the actual driver.

8        356. JOHN HALIKOWSKI, as Director of ADOT, had supervisory responsibility over  
9 MVD, and he knew or should have known that the procedure used by REDFLEX in gathering  
10 only vehicle registration information, without also obtaining driver's license photo ID, was an  
11 illegal method for an illegal purpose to obtain money by false pretenses, and that it would result  
12 in financial injury to all cited drivers, including Mr. Gutenkauf.

13        357. Mr. HALLIKOWSKI's failure to properly supervise the distribution of MVD  
14 records to REDFLEX indicates that he agreed and understood the method and purpose of the  
15 conspiracy to obtain money by false pretenses, that he had knowledge and consent of the acts  
16 alleged above, that he approved and ratified the illegal acts and procedures, and he knew that a  
17 portion of the proceeds of each ticket would go to the State Photo Enforcement Fund.

18        358. ROGER VANDERPOOL, as Director of DPS, had supervisory responsibility over  
19 REDFLEX under **A.R.S. 41-1722**, and he knew or should have known that the procedure used  
20 by REDFLEX in gathering only vehicle registration information, without also obtaining driver's  
21 license photo ID, was an illegal method for an illegal purpose to obtain money by false pretenses,  
22 and that it would result in financial injury to all cited drivers, including Mr. Gutenkauf.

23        359. Mr. VANDERPOOL'S failure to properly supervise the distribution of MVD  
24 records to REDFLEX indicates that he agreed and understood the method and purpose of the  
25

1 conspiracy to obtain money by false pretenses, that he had knowledge and consent of the acts  
2 alleged above, that he approved and ratified the illegal acts and procedures, and he knew that a  
3 portion of the proceeds of each ticket would go to the State Photo Enforcement Fund, which had  
4 administered as DPS Director.

5 360. TERRY GODDARD as Arizona Attorney General, had advisory supervisory  
6 responsibility over DPS, ADOT, and REDFLEX under A.R.S. 41-1722, and he knew or should  
7 have known that the procedure used by REDFLEX in gathering only vehicle registration  
8 information, without also obtaining driver's license photo ID, was an illegal method for an illegal  
9 purpose to obtain money by false pretenses, and that it would result in financial injury to all cited  
10 drivers, including Mr. Gutenkauf.

11 361. Mr. GODDARD'S failure to properly advise supervise the distribution of  
12 ADOT/MVD records to REDFLEX, and his failure to oversee and advise the DPS supervision of  
13 REDFLEX, indicates that he agreed and understood the method and purpose of the conspiracy to  
14 obtain money by false pretenses, that he had knowledge and consent of the acts alleged above,  
15 that he approved and ratified the illegal acts and procedures, and he knew that a portion of the  
16 proceeds of each ticket would go to the State Photo Enforcement Fund.

17 362. REDFLEX employees HARPER and DEGRAW agreed, to engage in a fraudulent  
18 scheme and artifice to collect money using the U.S. Postal system to deliver the alleged traffic  
19 citation, and that scheme was the proximate cause of financial damage to Daniel Gutenkauf from  
20 the traffic fine (\$197) and his cost to file the appeal (\$699 + \$23). (\$722.00)

21 363. The CITY OF TEMPE, by its contract with REDFLEX, had an agreement for a  
22 common purpose, to collect money by means of a fraudulent scheme and artifice of issuing  
23 traffic tickets, based solely on a gender match of the registered owner of the vehicle photo-  
24 graphed with Redflex cameras, using the U.S. Postal Service to deliver the traffic citation.

1           364. The TEMPE CITY COUNCIL members NAVARRO, ARREDONDO, ELLIS,  
2 SHERJERKIAN, WOODS, MITCHELL and City Manager MEYER, and Clerk HORT  
3 approved agreement with REDFLEX, signed by HALLMAN and FINLEY, which consisted of a  
4 plan to raise revenue and obtain money by false pretenses, by issuing traffic tickets to the  
5 registered owner of vehicles, instead of identifying the actual driver alleged to commit the  
6 violation ,

7           365. Presiding Judge ARKFELD 's signature on the traffic ticket to Mr. Gutenkauf was  
8 an overt act in the furtherance of a conspiracy, showing an agreement with the CITY OF TEMPE  
9 and the TEMPE POLICE DEPARTMENT, and Officer COLOMBE, to obtain money by false  
10 Pretenses, when the actual driver had not been identified as required by **A.R.S. 28-1561**.

11           366. Mr. PICKRON, through his corporation AAA PHOTO SAFETY INC., had an  
12 agreement with REDFLEX and the CITY of TEMPE to serve Process on registered owners of  
13 vehicles alleged to have committed violations of **A.R.S. 701 A**, even though all three parties  
14 knew that the actual drivers had not been identified, as required by **A.R.S. 28-1561**.

15           367. Mr. DAVIE, as CEO of REDFLEX HOLDINGS LTD, and Ms. FINLEY, as CEO  
16 Of REDFLEX TRAFFIC SYSTEMS, understood and agreed to the conspiracy between  
17 REDFLEX and the CITY OF TEMPE to obtain money by false pretenses, without positive ID of  
18 Mr. Gutenkauf as the actual driver, and he knew that the purpose and method of testimony was  
19 unlawful, because the REDFLEX Procedure's Manual (Business Rules) instructed both DPS  
20 on directions for issuing traffic citations based only on a gender match, in violation of **A.R.S. 28-**  
21 **1561**.

22           368. Mr. DAVIE and Ms. FINLEY both knew that the procedure used by REDFLEX in  
23 gathering only vehicle registration information, without also obtaining driver's license photo ID,  
24 was an illegal method for an illegal purpose to obtain money by false pretenses, and that it would  
25

1 result in financial injury to all cited drivers, including Mr. Gutenkauf.

2 369. The procedure and custom of TEMPE POLICE DEPARTMENT and REDFLEX,  
3 which approves the issuing traffic citations based on certifications without reasonable grounds to  
4 identify the actual driver as required by A.R.S. 28-1561, was an agreement to obtain money by  
5 false pretenses, and the conspiracy by the named REDFLEX employees, CITY OF TEMPE  
6 employees, and the STATE OF ARIZONA actors was the proximate cause of financial damage  
7 to Daniel Gutenkauf from the traffic fine (\$197) and his cost to file the appeal (\$699).

### 8 PRAYER FOR RELIEF

9  
10 Plaintiff has no adequate and sufficient post deprivation remedy available at law with  
11 which to address the wrongs alleged herein and will continue to suffer irreparable injury from the  
12 conduct of Defendants unless he is granted equitable relief prayed for herein.

13 WHEREFORE, Plaintiff prays that the Court

14 1. Declare that Defendants HALLMAN, NAVARRO, ARREDONDO, ELLIS,  
15 SHERJERKIAN, WOODS, MITCHELL, HORT, MEYER, McALLISTER,  
16 REDFLEX TRAFFIC SYSTEMS, INC, FINLEY, HARPER, DEGRAW,  
17 BERNARD, REDFLEX HOLDINGS LTD., DAVIE, AAA PHOTO SAFETY INC.,  
18 PICKRON, ARNETT, COLOMBE, GALLEG0, BARSETTI, ARKFELD,  
19 RODDRIGUEZ, Chief RYFF, Lt. JOHNSON, GODDARD, VANDERPOOL,  
20 HALIKOWSKI, have engaged in a civil conspiracy to inflict injury upon the Plaintiff,  
21 and to therefore be jointly and severally liable fo all damages awarded by the Court,  
22 without allocation, apportionment, or limitation of liability.

23  
24 2. Enjoin Defendants from committing any further actis in furtherance of said  
25 conspiracy.

3. Award Plaintiff compensatory damages as proven at trial; to be paid in U.S. Dollars,

a U.S. Dollar will be defined as one ounce silver coin of .999 fine silver, pursuant to the Coinage Act of 1792, or the equivalent par value in gold coins.

4. Award Plaintiff Punitive damages as based on 10 percent of each Defendants wealth; to be paid in U.S. Dollars, a U.S. Dollar will be defined as one ounce silver coin of .999 fine silver, pursuant to the Coinage Act of 1792, or the equivalent par value in gold coins.

5. Award Plaintiff **Four Million dollars** in damages, compensatory and punitive combined, for this cause of action.

6. Grant Plaintiff jury trial on all issues so triable.

7. Award Plaintiff reasonable attorney fees; (if applicable)

8. Award Plaintiff costs of suit; and

9. Such other and further relief as the court deems just and proper.

# **DEMAND FOR DECLARATORY RELIEF**

## **1. DEMAND FOR COURT TO DECLARE THAT REDFLEX IS REQUIRED TO OBTAIN A PRIVATE INVESTIGATOR LICENSE SINCE TERMINATION OF STATE CONTRACT WITH DEPARTMENT OF PUBLIC SAFETY**

370. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 369 as though fully set herein.

371. On April 7, 2009, Arizona Legislative Council Attorney Patricia A. Probst issued a MEMO To Representative Sam Crump, in response to his question “ Is Redflex Traffic Systems Inc. (Redflex) required to be a licensed private investigator to conduct speed camera operations under its contract with the State of Arizona?

372. AZ Legislative Council Attorney Probst answered the question, saying “one could argue that Redflex and its employees are engaged in activities that amount to private investigating and thus should be properly licensed or registered.”(See **EXHIBIT** Arizona Legislative

1 Council Memo, April 7, 2009)

2 373. In the second paragraph on page 3 of the Legislative Council Memo, Attorney Probst  
3 states the opinion that it does not appear that Redflex would fall within any of the exemptions to  
4 the requirement to obtain a private investigators license under **A.R.S. 32-2409**.

5 374. Attorney General Opinion No. I10-001 (R09-027), issued by Defendant TERRY  
6 GODDARD on January 14, 2010 concluded that a vendor who contracts to provide a state photo  
7 enforcement system, pursuant to **A.R.S. 41-1722**, is not required to be licensed as a private  
8 investigator.

9  
10 375. TERRY GODDARD reasoned in his AG opinion that the regulation and oversight  
11 through the contracting process with DPS protects the public health safety and welfare from  
12 potential or actual misconduct, acts of dishonesty or fraud by the PhotoEnforcement vendor.

13 376. On July 15, 2010, the Arizona Department of Public Safety contract for Photo  
14 Enforcement with REDFLEX TRAFFIC SYSTEMS INC. was officially terminated.

15 377. Since the termination of the DPS contract with REDFLEX TRAFFIC SYSTEMS  
16 INC., on July 15, 2010, DPS no longer has power of regulation and oversight of the operations of  
17 Redflex under **A.R.S. 41-1722**, and there is no governmental agency to protect the public health,  
18 safety, and welfare from potential or actual misconduct, acts of dishonesty or fraud by  
19 REDFLEX TRAFFIC SYSTEMS INC., and its employees

20  
21 378. Ironically, DPS, the very agency charged with regulation and oversight of photo  
22 enforcement vendor REDFLEX, under **A.R.S. 41-1722**, actually acquiesced to and participated  
23 in the same pattern of misconduct, acts of dishonesty and fraud perpetrated by REDFLEX, instead  
24 of protecting the public from the fraudulent scheme and artifice to obtain money by false  
25 pretenses.

379. In addition, not only has REDFLEX corrupted the integrity of law enforcement at

1 DPS and the Tempe Police Department, upon information and belief, it appears REDFLEX has  
 2 now lured former DPS Director Roger Vanderpool and former Paradise Valley Police Chief  
 3 Wintergreen to be a paid consultants, to use the influence of their former law enforcement  
 4 positions in dealing with other municipalities and law enforcement in other States.

5 380. **A.R.S. 41-1722** does not contain any provision which permits a *municipality* to  
 6 enter into a contract for photo enforcement with a vendor who is not under supervision of DPS  
 7 and which is not licensed as a private investigator.

8 381. Although there has been litigation in other States, such as Texas and Louisiana,  
 9 challenging whether the private investigation laws apply to a photo enforcement vendor such as  
 10 Redflex, (with mixed results), this issue has not been litigated in Arizona.

11 382. Now that the public is no longer protected by Arizona Department of Public Safety  
 12 for potential misconduct, acts of dishonesty and fraud by a photo enforcement vendor such as  
 13 REDFLEX in particular, this issue is perfectly “ripe” for litigation and Declaratory Relief by the  
 14 Federal District Court of Arizona, given the divergence of rulings in other States, which are not  
 15 controlling for the State of Arizona.

#### 16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief as follows:

- 18 1) For the Court to declare that REDFLEX TRAFFIC SYSTEMS, INC., a private  
 19 corporation engage in activities which affect interstate commerce, is engaged in  
 20 activities which constitute that of a “private investigator” pursuant to **A.R.S. 32-2401,**  
 21 **section 16(a) and (b).**
- 22 2) For the Court to declare that REDFLEX TRAFFIC SYSTEMS, INC., does not fall  
 23 within the list of Exemptions in **A.R.S. 32-2409.**
- 24 3) For the Court to declare that REDFLEX TRAFFIC SYSTEMS INC., has knowingly  
 25

violated the requirement to obtain a private investigator license under **A.R.S. 32-2411**, since July 15, 2010, when the Arizona Department of Public safety terminated its contract with REDFLEX.

4) For the Court to declare that the CITY OF TEMPE , a municipality, has no statutory authority to contract with a private vendor (especially REDFLEX) for photo speed enforcement pursuant to **A.R.S. 41-1722**, only the Department (DPS) has that authority granted by the Legislature.

5) For the Court to declare that all other municipal entities in Arizona are without authority to contract with a private vendor (especially REDFLEX) for photo speed enforcement.

**2. Demand for Court To Declare that All CITY OF TEMPE Employee Defendants, whose Loyalty Oaths do not conform To A.R.S. 38-231 are not entitled to any Compensation and their Offices are deemed "Vacant".**

383. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 382 as though fully set herein.

384. The CITY OF TEMPE is an "enterprise" engaged in interstate commerce and the Federal District Court of Arizona has jurisdiction over matters affecting interstate commerce.

385. CITY OF TEMPE employees (and all public employees in Arizona) are required to take the loyalty oath to support the Constitution of the United States and the Constitution and laws of the State of Arizona, pursuant to **A.R.S. 38-231**, and **U.S. Constitution, Art.VI, cl 3**.

386. **A.R.S. 38-231 B.** provides that no public employee is entitled to any compensation without having taken and subscribed the required oath. (See **EXHIBIT C**)

387. **A.R.S 38-291(9)** provides that an office is automatically deemed "vacant" for failure to take the loyalty oath required under **A.R.S. 38-231**. (See **EXHIBIT D**)

388. It is apparent from a visual examination of certified copies of the loyalty oaths of



1 CITY OF TEMPE Defendants COLOMBE, GALLEGO, BARSETTI, McALLISTER, and  
2 RYFF, that each of those oaths are devoid of a “jurat” showing the date the oath was “taken”,  
3 who administered the oath, who witnessed the subscription of the oath, and the date that the oath  
4 was “filed of record”.

5 389. Daniel Gutenkauf made a public records request to the City of Tempe Human  
6 Resources Department for a certified copy of the loyal oath of office for Officer  
7 COLOMBE.

8 390. The document which purports to be the loyalty oath for AARON COLOMBE  
9 contains no notary “jurat”, no evidence of the date when the oath was “subscribed”, no evidence  
10 of who witnessed his signature, no evidence that the oath was ever “taken,” no evidence of who  
11 administered the oath, no evidence of a date when the oath was “filed of record”; the oath is not  
12 in proper form, which reproduces all of **A.R.S. 38-231**, and it is not in affidavit form. (See  
13 **EXHIBIT F**)

14 391. On Feb. 11, 2009, Daniel Gutenkauf made a public records request to the City of  
15 Tempe Human Resources Department for a certified copy of the loyal oath of office for  
16 Ms.GALLEGO.

17 392. The document which purports to be the loyalty oath for BIANCA GALLEGO  
18 contains no notary “jurat”, no evidence of the date when the oath was “subscribed”, no evidence  
19 of who witnessed her signature, no evidence that the oath was ever “taken,” no evidence of who  
20 administered the oath, no evidence of a date when the oath was “filed of record”; the oath is not  
21 in proper form, which reproduces all of **A.R.S. 38-231**, and it is not in affidavit form. (See  
22 **EXHIBIT H**)

23 393. On 3/2/2009, Plaintiff made a public records request for a certified copy of the  
24 loyalty oath of office, date of hire and salary for Judge BARSETTI.  
25

1           394. The document which purports to be the loyalty oath for Judge BARSETTI does not  
 2 reproduce all the provisions of **A.R.S. 38-231** as required by section A, and the document  
 3 contains no evidence of when it was “filed of record” as required under **A.R.S. 38-233**. (See  
 4 **EXHIBIT J**)

5           395. On May 4, 2010, Mr. Gutenkauf made a public records request from CITY OF  
 6 TEMPE Human Resources Department for a certified copy of the loyalty oath of office for  
 7 David McAllister.

8           396. The document which purports to be the loyalty oath for David McAllister contains  
 9 no notary “jurat”, no evidence of the date when the oath was “subscribed”, no evidence of who  
 10 witnessed his signature, no evidence that the oath was ever “taken,” no evidence of who  
 11 administered the oath, no evidence of a date when the oath was “filed of record”; the oath is not  
 12 in proper form, which reproduces all of A.R.S. 38-231, and it is not in affidavit form. (See  
 13 **EXHIBIT B**, loyalty oath for David McAllister)

14           397. On June 25, 2010, Plaintiff made a public records request for a certified copy of the  
 15 loyalty oath of office for Tempe Police Chief THOMAS RYFF.

16           398. It is evident from the response to Plaintiff’s public records request that THOMAS  
 17 RYFF last took an oath of office on August 27, 1979 as a Tempe police officer, and he did not  
 18 take the required loyalty oath when he was appointed to his new position as Chief of Police for  
 19 the CITY OF TEMPE on Nov. 27, 2006, as required by **A. R. S. 38-231**. (See **EXHIBIT I**)

20           399. It is apparent that CITY OF TEMPE has a custom or policy of not administering the  
 21 loyalty oath of office to its employees upon hiring, as required under **A.R.S. 38-231, 232, and**  
 22 **233**.

23           400. The Federal Courts are “the Guardians of the Constitution”, and the Federal District  
 24 Court of Arizona has a duty to ensure that all Arizona public employees, engaged in activities  
 25

1 which affect interstate commerce, are in compliance with all laws which require them to “take  
 2 and subscribe” the loyalty oath to uphold the Constitution of the United States, **Art.VI cl 3**, and  
 3 the Court has a duty to adjudicate in matters where violations of the Federal Constitution occur.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 1) For the Court to declare that City of Tempe employees COLOMBE, GALLEG0,  
 7 BARSETTI, McALLISTER, and RYFF are not entitled to any compensation,  
 8 pursuant to **A.R.S. 38-231 (B)**, for failure to take and subscribe the required loyalty  
 9 oath of office.  
 10  
 11 2) For the Court to declare that **A.R.S. 38-231** contains no provision for filing a loyalty  
 12 Oath of office *nunc pro tunc*.  
 13  
 14 3) For the Court to declare that the offices of City of Tempe employees COLOMBE,  
 15 GALLEG0, BARSETTI, McALLISTER, and RYFF are deemed “vacant”, pursuant  
 16 To **A.R.S. 38-291(9)**

17 **DEMAND FOR INJUNCTIVE RELIEF**

18 401. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through  
 19 400 as though fully set herein.

20 402. Attorney General Opinion No. I10-001 (R09-027) states on page 3 that “The  
 21 purpose of licensing and regulating private investigators is to protect the public from  
 22 unscrupulous and unqualified investigators” citing *Landi v. Arkules*, 172 Ariz. 126, 135, 835  
 23 P.2d 458, 467 (App. 1992).

24 403. Since Redflex was recently sued in Federal Court by American Traffic Systems for  
 25 false advertising claims and the use of radar not certified by the FCC, and in light of this instant  
 claim, alleging RICO Violations by Redflex by means of mail fraud, wire fraud and extortion,

1 Plaintiff demands that this Court exercise its supervisory and judicial powers by granting first a  
 2 Temporary Injunction until this matter is resolved, and then a Permanent Injunction if miscon-  
 3 duct is found, which would disqualify Redflex as a private investigator.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

6 (1) That the court determine and enter judgment declaring that the acts and omissions of  
 7 each the defendants listed above, as set forth, above violate rights secured to Plaintiff  
 8 by the Fourth and Fourteenth Amendments to the United States Constitution;

9 (2) That upon hearing, the Court issue a permanent injunction:

10 (a) Enjoining the Defendants, their employees, agents, and successors in office from  
 11 failing to instruct, train and supervise their employees and agents on how to properly  
 12 certify an Arizona Traffic Ticket, and enjoining them from issuing photo speed tickets  
 13 based solely on a gender match, instead of reasonable grounds and positive identification  
 14 of the actual driver, as required by law, under A.R.S. 28-1561. The harm suffered by the  
 15 Plaintiff and the public interest, in the absence of injunctive relief, outweighs the harm  
 16 the Defendant will suffer if the injunction is granted.

17 DATED this 8<sup>th</sup> day of January, 2011.

18 Daniel Arthur Gutenkauf  
 19 Daniel Arthur Gutenkauf, Pro Per  
 20 1847 E. Apache Blvd. #41  
 21 Tempe, Arizona 85281  
 22 480-966-7018  
 23  
 24  
 25

**ATTESTATION**

I, Daniel Arthur Gutenkauf, am the Plaintiff in this action, and I hereby attest and solemnly affirm that the facts stated within this complaint are based in part upon information and belief, and based in part on personal knowledge, and those facts are true, correct, and accurate, to the best of my knowledge and ability at this time.

DATED this 8<sup>th</sup> day of January 2011.

Daniel Arthur Gutenkauf  
Daniel Arthur Gutenkauf, Pro Per  
1847 E. Apache Blvd. #41  
Tempe, Arizona 85281  
480-966-7018

ADDENDUM : Newly Discovered Information

404. Plaintiff hereby re-alleges and fully incorporates by reference paragraphs 1 through 403 as though fully set herein.

405. Plaintiff 's public records request to CITY OF TEMPE City Clerk's office on September 16, 2010, referenced in paragraph 224 above (EXHIBIT R), had also included a request for the name of the Tempe Police Project Manager for Photo Speed Enforcement, but that information was not included with the documents mailed to Plaintiff by Mr. GREENE on September 24, 2010, and that information was not included in the subsequent letter from Mr. GREEN, dated September 29, 2010. (EXHIBIT S)

406. Plaintiff just recently discovered that on December 1, 2010, REDFLEX TRAFFIC SYSTEMS INC., filed a COMPLAINT in Maricopa County Superior Court against its own client, CITY OF TEMPE, Case No. CV2010-054734, for Breach of Contract.

405. Within the exhibits attached to the REDFLEX lawsuit against CITY OF TEMPE, Lieutenant Kerby Rapp is named as Tempe's Photo Enforcement Project Manager, who was previously listed as JOHN DOE Tempe Police Project Manager in the caption of Plaintiff's Original Complaint.

407. Lieutenant KERBY RAPP, ("Lt. RAPP") is a citizen of the United States, and is a resident of the State of Arizona. Said Defendant is a Police Officer with rank of Lieutenant in the Tempe Police Department in the Police Traffic Bureau, and he is being sued in his official capacity as a police officer and in his individual capacity. All individual acts or failures to act alleged were done on behalf of the marital community, which includes his wife JANE DOE RAPP.

408. On April 29, 2010, Lt. RAPP issued a Memorandum to Mayor HALLMAN and Tempe City Council on the subject of "Review of Fixed Radar Locations in Tempe", which stated in part: ... " A Notice of Violation is issued to vehicles registered to companies or organizations, or in cases where we cannot determine who the driver is at the time of the violation. A traffic Citation is issued when, through our review process, we are able to determine the identity of the driver, typically by driver's license comparison." ...

(See EXHIBIT Y)

1           409. In his Memorandum to the Mayor and Tempe City Council, Lt. RAPP's description  
2 that a traffic Citation is issued when they are able to determine the identity of the driver by  
3 means of a driver's license comparison, is in direct conflict with the sworn testimony of Ms.  
4 GALLEGO in Tempe City Court on 2-17-09, wherein she testified that there is NO comparison  
5 of the driver's license photo ID with the Redflex photo before the certification of the traffic  
6 ticket, which is based only a 'gender match.'

7           410. Lt. RAPP knew or should have known that his subordinate officers were in fact  
8 certifying traffic citations, based only on a gender match, without doing a driver's license  
9 comparison, and that the unlawful procedure would lead to the reasonably foreseeable result  
10 of violating the Constitutional rights of all Defendant drivers, including Mr. Gutenkauf, as well  
11 as causing financial injury.  
12

13           411. Lt. RAPP's failure to train Officer COLOMBE and Traffic Aide GALLEGO in the  
14 proper procedure to issue Traffic Citations under A.R.S. 28-1561, was a result of a custom or  
15 policy of "deliberate indifference" in the Tempe Police Department, and that policy was the  
16 proximate cause of injury to Mr. Gutenkauf, depriving him of his Fourth Amendment right to  
17 have no warrant issued except upon probable cause, and his right to be protected from malicious  
18 prosecution, and his right to Substantive and Procedural Due Process, protected by the  
19 Fourteenth Amendment, and Lt. RAPP'S failure to train and supervise his subordinate officers  
20 was the proximate cause of financial damage to Mr. Gutenkauf from the traffic fine (\$197) and  
21 his cost to file the appeal (\$699).  
22

23           412. Lt. RAPP's issuance of the written Memorandum on 4-29-10 was an overt act in  
24 the furtherance of the conspiracy to obtain money by false pretenses, issuing traffic citations  
25 without determining the identity of the driver.

          413. Lt. RAPP, acting under color of State law, under color of his authority as a Tempe

Police officer and as Tempe Police Photo Enforcement Project Manager, acting within the scope of his employment, but acting outside the scope of his authority, acting in concert with Mayor HALLMAN and the Tempe City Council members, and acting in concert with the Tempe Deputy City Court Manager NANCY RODRIGUEZ and Tempe Traffic Engineering Department Employee SHELLY SEYLER, knowingly and willingly engaged in an agreement to “aid and abet” the RICO conspiracy, under 18 U.S.C. 1962 (d), which was the proximate cause of financial damage to Mr. Gutenkauf from the traffic fine (\$197) and his cost to file the appeal (\$699).

414. Lt. RAPP, acting in concert with REDFLEX Project Manager JOE BERNARD, breached his duty to properly supervise the CITY OF TEMPE Police Officers in proper issuance of Photo Speed Citations, showing his agreement with the unlawful methods and purpose of the conspiracy to obtain money by false pretenses, causing financial damage to Mr. Gutenkauf, due to Lt. RAPP’s knowing, intentional, and deliberate participation in the conspiracy.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

- 1) That the Court enter Judgment against Lt. RAPP, consistent with the other named Defendants in each of the 3 Causes of Action listed above, for violations of 42 USC 1983, 18 USC 1962 (d), and Action for Damages Due to a Conspiracy.
- 2) Compensatory damages as determined by a jury
- 3) Punitive Damages, based on 10% of Defendant’s wealth, as determined by a jury.
- 4) Award Plaintiff reasonable attorney fees; (if applicable)
- 5) Award Plaintiff costs of suit; and
- 6) Such other and further relief as the court deems just and proper.



1 DATED this 9<sup>th</sup> day of January, 2011.

2 Daniel Arthur Gutenkauf  
3 Daniel Arthur Gutenkauf, Pro Per  
4 1847 E. Apache Blvd. #41  
5 Tempe, Arizona 85281  
6 480-966-7018

7 **ATTESTATION**

8 I, Daniel Arthur Gutenkauf, am the Plaintiff in this action, and I hereby attest and solemnly  
9 affirm that the facts stated within this complaint are based in part upon information and belief,  
10 and based in part on personal knowledge, and those facts are true, correct, and accurate, to the  
11 best of my knowledge and ability at this time.

12 DATED this 9<sup>th</sup> day of January, 2011.

13 Daniel Arthur Gutenkauf  
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