

FILED	LODGED
RECEIVED	COPY
JAN 10 2011	
CLERK U S DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

Exhibit A

City of Tempe
City Clerk's Office
31 E. 5th Street
Tempe, AZ 85281



CLAIMS AGAINST THE CITY OF TEMPE
For Damages to Persons or Personal Property

NOTE: State Statute requires that claims *must* be filed with the City Clerk's Office within 180 days after the cause of action accrues.

By submitting the following information the claimant complies with the requirements of A.R.S. 12-821.01 regards claims against a municipality.

1. Name of Claimant Daniel Arthur Gutenkauf Spouse Name _____

Date of Birth 1-17-51

2. If Minor, name of Legal Guardian _____

Guardian's Date of Birth _____

3. Address of Claimant 1847 E. Apache Blvd #41
City Tempe State AZ Zip 85281

Home Phone No 480-966-7018 Work Phone No _____ Cell No. _____

4. Occurrence or event from which the claim arises:

a. Date of Loss 10-06-09 b. Time of Loss _____ c. Police Report No. _____

d. Location of Incident (exact and specific) _____

e. Specify the particular occurrence, event, act or omission you claim caused the injury or damage (use additional paper if necessary) Claimant was damaged by having to pay appellate filing fee (\$146) to Clerk of Superior Court and Court reporter fees (\$485) for civil traffic hearing transcript of a case that should have been dismissed by Tempe Municipal Court.

f. State how or wherein the City of Tempe or its employees were at fault The Appell Court ruled that the City of Tempe trial court should have granted the Appellant's motion to dismiss the case. The Tempe Police Dept. did not provide reasonable grounds to issue the traffic ticket, Appellant should not have had to file an appeal and pay the costs associated with the appeal. (\$699 total) (turn over)

5. Give the name(s) of the City employees having knowledge of or involved in the incident (if auto accident involving a City vehicle, please provide city vehicle description & license plate number, driver name and department) _____

Tempe Police Officer Aaron Colombe

Traffic Enforcement Aide Bianca Gallego

6. Describe claimants injury, property damage, auto damage (include year, make, & model of vehicle) or loss. If there were no injuries, state "no injuries" _____

No injuries

7. Dollar amount requested to settle this incident \$ 699.00 (Must provide amount)

- a. Basis for computation of amounts claimed (include copies of all bills, invoices, estimates, receipts etc)

Sup. Ct. Appeal Filing Fee (\$146), 2 audiotapes of hearing (\$34)
Transcript of traffic hearing (\$485), copies of court records (\$34)

8. Name and addresses of all witnesses, hospitals, doctors, etc. _____

9. Any additional information that might be helpful in considering claim: _____

See copy of Appeal Court ruling, dated 10/06/2009

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM!!

(Sec A.R.S. 13-2310 Insurance Code 44-1220)

I have read the matters and statements made in the above claim I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Signed this 9th day of March, 2010

Claimants Signature

Daniel Arthur Gatenkayf

City of Tempe
City Clerk's Office
31 E. 5th Street
Tempe, Arizona 85281

Attn: David McAllister
Risk Management
20 East Fifth Street
Tempe, Arizona 85281

March 8, 2010

NOTICE OF CLAIM: RE: LC2009-000408-001 DT

Dear Mr. McAllister,

I am submitting a Notice of Claim, pursuant to **A.R.S. 12-821.01**. This claim involves a financial loss to me, incurred by having to file an appeal from an alleged civil traffic violation of **A.R.S. 28-701 A**. It was based on a photo enforcement traffic ticket issued by Tempe Police Officer Aaron Colombe. The appellate court reversed and the finding of responsibility and the sanction imposed, in its Order dated 10/06/2009.

I understand that, according to **A.R.S 12-820.01 Absolute immunity** A public entity shall not be liable for acts and omissions of its employees constituting either of the following:

1. The exercise of a judicial or legislative function.
2. The exercise of an administrative function involving *the determination of a* fundamental governmental policy.

However, the Arizona Supreme Court, in its landmark case of *Ryan v. State* 134 Ariz. 308, reaffirmed the policy that **liability is the rule and immunity is the exception** in an action against the government involving tortious conduct. I refer to Vol. 28 Arizona Law Review 49, "**A Separation of Powers Analysis of the Absolute Immunity of Public Entities**".

A public entity acts through its officers and employees. *Bone v. Bowen*, 20 Ariz. 592. The acts and omissions of the public officers and employees give rise to potential liability. *Ryan*, 134 Ariz. at 311. An injured citizen may seek redress **from either the public entity or its employee, or both**. Courts have held consistently that *respondeat superior* is applicable to the breach of a duty by a governmental employee or agent acting within the scope of employment. *Jesik v. Maricopa County Community College District*, 125 Ariz. 543 (1980) *Patterson v. City of Phoenix*, 103 Arizona 64.

The immunity of a public entity does not protect the public employee in his or her individual capacity when the employee is sued directly for his or her own tortious conduct. See James, *Tort Liability of Governmental Units and Their Officers*, 22 U. Chi.

L. Rev. 610, at 635. Similarly, the official immunity of a public employee may not protect a public entity under an application of *respondeat superior*. *James v. Prince George's County*, 418 A.2d at 1182.

Discretionary decisions of police officers are not immune from liability. *Chambers v. King County*, 100 Wash. 2d 275, 283, 669 P.2d 451, 457 (1983) *Bender v. City of Seattle*, 99 Wash. 2d 582, 589-90, 664 P.2d 492, 498-99 (1983). The fact that administrative conduct involves "discretion" or "evaluation, judgment and expertise" is not sufficient to require immunity, because of the absence of a "fundamental governmental policy".

Based on the above, it is clear that Daniel Gutenkauf has a cause of action against Officer Aaron Colombe, because of his breach of duty to strictly follow the provisions of **A.R.S. 28-1561** in his certification of the traffic ticket. As the **Superior Court ruled on 10/06/2009**

"No reasonable grounds existed for *Officer Colombe* to issue the complaint to the 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." ... "*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."

Officer Colombe had a clear duty to strictly adhere to the provisions of ARS 28-1561. Officer Colombe breached his duty, by issuing the traffic ticket without reasonable cause that the person named in the complaint committed the violation contrary to law (based only on a gender match). In fact, Officer Colombe's false certification of the traffic ticket was **perjury**, pursuant to **A.R.S. 28-1561 B**. A section 1983 action may be brought with respect to police conduct which is prohibited by the state's Constitution or laws. See *Monroe v. Pape* 365 US 167, 81 S.Ct. 473 (1961) *Monell v. Department of Social Services* 436 US 658, 98 S.Ct. 2018 (1978). Officer Colombe's breach of duty was the proximate cause of the financial damage to Daniel Gutenkauf, both for the fine imposed and the cost of filing the appeal and the cost of the transcript.

Cause of Action under 42 USC 1983

Since Officer Colombe's actions were done "under color of state law", Daniel Gutenkauf has a cause of action against the officer in both his official representative capacity *and in his individual capacity* under **42 USC 1983, Deprivation of Rights under color of State law**. The Officer violated Daniel Gutenkauf's clearly established Constitutional right to Due Process of Law, under both the Fifth Amendment and the Fourteenth Amendment to the United States Constitution. Clearly, I have met *both elements* necessary to *plead and prove* (1) a person has deprived me of a federal right and (2) that the person has done so under color of state law.

Government officials performing discretionary functions generally are shielded from liability for civil damages *insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known*. If the law was clearly established, *the immunity defense ordinarily should fail*, since a reasonably competent public official should know the law governing his conduct. *Harlow v. Fitzgerald* 457 US 800, 818-19.

In addition to Officer Colombe's personal liability, the City of Tempe is liable under the doctrine of *respondeat superior*, since the City of Tempe has a policy, custom and procedure that allowed the false certification. As the Superior Court stated in its ruling on 10/06/2009: "*Because the procedure adopted by the department did not provide reasonable grounds to issue the ticket to the appellant*, the trial court should have granted the appellant's motion to dismiss the case."

In order to hold a municipality or municipal agency such as a police department responsible for the acts of its employees or agents, the Plaintiff must prove that the deprivation of rights occurred in the execution or implementation of some local government policy or custom adopted or established by those municipal bodies or officials whose edicts or acts may fairly be said to represent official policy. See *Monell v. Department of Social Services* 436 US 658, 98 S.Ct. 2018 (1978) Clearly, I have met my burden to prove that element, as evidenced by the appellate court's ruling.

Where the action is brought against a local official in a representative capacity, the municipality or other local governmental body is the actual defendant and will be liable if a judgment is rendered against the official, provided it received notice and was given an opportunity to respond. *Brandon v. Holt*, 105 S.Ct. 873, 83 LE2d 878 (1985)

Action for Damages caused by Acts committed pursuant to a Conspiracy

Arizona law recognizes a cause of action for damages caused by acts pursuant to conspiracy, but not for the conspiracy alone in absence of acts taken pursuant to that conspiracy with resulting damage. *In re Hashim* 356 BR. 728.

A conspiracy claim requires an agreement between two or more persons to accomplish an unlawful purpose or a lawful purpose by unlawful means, and accomplish the underlying tort, which in turn caused damages. A civil conspiratorial agreement need not be express; it may be implied by the tortious conduct itself. See *Dawson v. Withycombe*, 163 P. 3d 1034, 216 Ariz. 84 (Ariz. Ct. App. 2007).

Claimant Daniel Gutenkauf has a cause of action for damages arising out of acts committed pursuant to a conspiracy between Tempe traffic enforcement aide Bianca Gallego, who was the State's witness in the civil traffic hearing conducted on 2/17/ 2009. and police officer Aaron Colombe. Officer Colombe's signature (false certification) on the traffic complaint is the evidence of *an overt act* in the furtherance of the conspiracy, which resulted in financial damage to Daniel Gutenkauf. Officer Gallego's appearance

and testimony in traffic court, based on Officer Colombe's false certification on the complaint, was *an overt act* in the furtherance of the conspiracy, to accomplish a lawful purpose by unlawful means, i.e. perjury.

At least two Redflex employees were also involved in the conspiracy, namely custodian Bill Harper (page 45 of trial transcript) and Matthew J. McGraw, who provided records of testing certification of the speed detection system. (See State's Exhibit #4 and page 51 trial transcript). Daniel Gutenkauf's damage from the traffic fine (\$197) and his cost to file the appeal (\$699) arose out of acts committed pursuant to a conspiracy between the individuals named above.

It is clear that the City of Tempe, by its contract with Redflex, had an agreement for a common purpose, to collect revenue illegally, by means of the policies of both City of Tempe and Redflex, to issue traffic tickets, based solely on a gender match of the registered drivers who were photographed with Redflex cameras. This policy, which approves the issuing traffic citations based on false certifications, in violation of A.R.S. 28-1561, was the proximate cause of financial damage to Daniel Gutenkauf.

Evidence of the policy of false certification appears in trial transcript of Officer Bianca Gallego's testimony regarding the Tempe Police procedure for accepting and issuing a photo enforcement citation (See page 28, lines 2-25 of trial transcript). Further evidence of the policy of using only a gender match to issue traffic tickets appears in Redflex's manuals, showing the procedure used for accepting or rejecting citations.

To prove conspiracy between state and private parties under section 1983, claimant must show agreement or a meeting of the minds to violate constitutional rights; participants in conspiracy need not know exact details of plan but, to be liable, each participant must at least share common objective of conspiracy. 42 U.S.C.A. 1983, *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, certiorari denied 110 S.Ct. 51, 493 U.S. 809, 107 L.Ed. 2d 20, on subsequent appeal 896 F.2d 403, appeal after remand 944 F.2d 910.

Compensatory Damages

Although a violation of 42 USC 1983 is actionable for nominal damages without proof of actual injury, substantial damages are available only to compensate for actual injury. *Carey v. Phipps*, 435 US 247, 98 S. Ct. 1042, 55 L.Ed2d 252 (1978)

Under section 1983, a plaintiff is entitled to recover compensatory damages for all injuries suffered as a consequence of the deprivation of a constitutional right, with such damages calculated in most circumstances according to general tort law principles applicable to the type of deprivation proved. *Schiller v. Strangis*, 540 F. Supp 605 (D. Mass. 1982)

Punitive Damages

Punitive damages may be awarded if the plaintiff proves not just intentional interference with the plaintiff's constitutional rights but, in addition, malicious and wanton disregard of those rights. The court also must conclude that actual damages would not suffice to deter the defendant's wrongdoing. *Schiller v. Strangis*, 540 F. Supp 605 (D. Mass. 1982)

One measure of punitive damages is based on 10% of a defendant's salary or a percentage of his property holdings or assets. The amount of punitive damages is generally determined by the jury.

Cause of Action under civil RICO for treble damages

It appears that Daniel Gutenkauf has a cause of action for civil RICO against the City of Tempe for participating in an enterprise engaged in racketeering activity which affects interstate commerce. Claimant may file an action in Superior Court under **A.R.S. 13-2314.04**, or in the alternative, in Federal District Court under **18 USC 1961 and section 1962**. Federal and State Courts may exercise concurrent jurisdiction.

Redflex Traffic Systems, Inc., is also subject to liability under **18 USC 1962 (d)** for its role in a *conspiracy*, in concert with City of Tempe, to violate subsections **(a)-(c) of 18 USCA 1962**. The Seventh Amendment grants the right to a jury trial in civil RICO actions. Since Daniel Gutenkauf was injured in his property by an apparent violation of 18 USCA 1962, he is entitled to recover treble damages under **18 USCA 1964 (c)**.

Provision in Arizona Racketeering Act that injured party "may file action in superior court for recovery of treble damages" permits private cause of action and provides that successful plaintiff is entitled to treble damages. **A.R.S. 13-2314, subd. A**, *Sullivan v. Metro Productions, Inc.*, 724 P.2d 1242, 150 Ariz. 573, 62 A.L.R. 4th 643, certiorari denied *Miller v. Sullivan*, 107 S.Ct 1334, 479 U.S. 1102, 94 L.Ed.2d 185

Elements of cause of action under civil RICO

In order to state a claim for damages under RICO, a plaintiff must plead and prove:

- (1) that the defendant has violated the substantive RICO statute, 18 USCA 1962, and
- (2) that the plaintiff has been injured in his business or property by reason of this violation.

Daniel Gutenkauf believes he has all the facts and evidence required to *plead and prove* all four elements of a civil RICO violation, namely (1) unlawful acts or conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. There is ample evidence that there have been at least two predicate acts of racketeering activity (within 5 years for State law, within 10 years for Federal law) that were related and posed a threat of continued criminal activity or were actually part of a demonstrated continuous

chain of activity. The pattern has been verified by the Superior Court's 10/06/2009 statement that: "... *the procedure adopted by the department did not provide reasonable grounds to issue the ticket to the appellant...*". The fact that City of Tempe has received income from nearly 100,000 citations each year, as cited below, shows a clear "pattern of racketing activity" by City of Tempe, in conjunction with Redflex, in its photo enforcement program.

The fact that these photo enforcement traffic tickets are issued only on a gender match, and not on positive identification of the driver, as required under **A.R.S. 28-1561 A**, means that the citations are based on *false certification*, ("**perjury**" under **28-1561 B**, and **ARS 13-2702**). That criminal behavior is compounded by the fact that the false documents (tickets) are sent by means of the U.S. Postal service, in violation of the **Mail Fraud** statute **18 USCA 1341** (affecting interstate commerce). In addition, the false certification of the photo enforcement traffic tickets by officers in the Tempe Police Department are an apparent violation of **A.R.S. 39-161, Presentment of false instrument for filing**. These violations of State law meet the first requirement for civil RICO action.

City of Tempe has received income from nearly 100,000 citations each year from a *pattern of racketeering activity* and used at least some of it, or the proceeds of it, in acquiring, establishing, or *operating an enterprise engaged in interstate commerce*. According to Tempe City Courts, \$10 of each citation goes to the city court for its technology and security, and \$10 goes to the Police Department, and \$26 goes to the general fund. See Arizona Republic, Friday, February 27, 2009, page 10, Tempe News, "**City gets \$1.56 million from photo enforcement**", attached hereto.

The Tempe News article, citing Tempe City Courts as its source of information, shows the distribution of the proceeds from the tickets for operating the enterprise: "...six court-service employees to process the tickets, a hearing officer, two enforcement aides to work in Police Department, and partial salaries for other court and police supervisory positions." While the court personnel may have immunity, the two enforcement aides and police supervisors are subject to liability for participating in the enterprise. They will be named as John Doe and Jane Doe Defendants, and their identities revealed upon Discovery.

Should the City of Tempe deny this Notice of Claim, Daniel Gutenkauf intends to engage in *rigorous discovery* under Rule 26.1 A. R. Civ. P., with Requests for Admissions, Non-Uniform Interrogatories, Request for Production of Documents under Rules 33, 34, and 36 A.R.Civ.P., as well as videotape depositions. Most of the essential issues in this case can already be resolved in Plaintiff's favor on a Motion for Summary Judgment or Partial Summary Judgment.

Proposed Settlement Prior to Filing Complaint in Court

It should be clear that Daniel Gutenkauf is entitled to recoup his costs of \$700 for filing fee and cost of court transcript for his traffic appeal, which should not have been necessary. Should the City of Tempe deny this Notice of Claim, Daniel Gutenkauf will file a lawsuit in either State or Federal court for 3 causes of action against City of Tempe as an entity and the individual employees:

- (1) violation of **42 USC 1983, Deprivation of rights under color of State law**
- (2) **action for damages** from acts committed pursuant to a conspiracy
- (3) violation of **18 USC 1961 and section 1962 (Federal civil RICO)**
or **A.R.S. 13-2314.04 (State civil RICO)**

Claimant will sue for *treble damages under RICO for fraud*, and will also seek *compensatory and punitive damages* from *each* of the participating actors in their personal capacity.

COMPUTATION OF DAMAGES

Deprivation of rights (City of Tempe)	\$ 700
Damages from acts done in conspiracy	\$ 700
treble damages for civil RICO	$\$700 \times 3 = \$2,100$
Deprivation of rights (Tempe P.D.)	\$ 700
Officer Colombe (compensatory damages)	\$ 700
10% of annual base salary (punitive damages)	\$7,899
Aide Gallego (compensatory damages)	\$ 700
10% of annual base salary (punitive damages)	\$3,970
John/Jane Doe Enforcement aide (compensatory)	\$ 700
10% of annual base salary (punitive)	\$3,970
Total	\$21,239

City of Tempe has a clear choice...settle now for \$700, or pay \$21,239 after litigation, not counting the cost of a jury trial to defend *three separate causes of action, in either Federal or State court*.

It should be noted that *three hits* on the official bond of Officer Colombe and Enforcement Aide Gallego will likely result in their termination as City of Tempe employees. The second traffic enforcement aide, John Doe or Jane Doe, will also get three hits on their official bond.

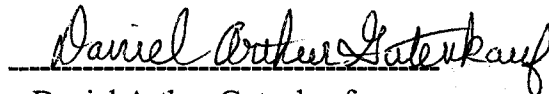
The other police supervisory personnel, unknown at this time, who are paid by the proceeds of the traffic ticket distribution, would be joined as co-conspirators, after Discovery is complete and the Complaint amended, pursuant to Rule 15(a) Az.R.Civ. P.

In addition, should Tempe Risk Management deny this Notice of Claim, Claimant will join claims adjuster David McAllister as a Defendant under **42 USC 1983, action for damages from acts due to a conspiracy, and civil RICO.** *(add \$700 compensatory plus 10% of salary and personal wealth for punitive damages for each cause of action)* This would be *three hits* on his official bond. Denial of the Notice of Claim for damages could be considered Mr. McAllister's tacit agreement with the conspiracy, *after the fact*, and therefore, constitute *an overt act in the furtherance of the conspiracy*.

Should the City of Tempe doubt the Claimant's ability and willingness to pursue this lawsuit, it should be noted that Daniel Gutenkauf has previously sued the City of Tempe and two Tempe police officers in a previous Federal civil rights lawsuit in 1997, which lasted three years, and advanced to the Ninth Circuit Court of Appeals and the U.S. Supreme Court. The City of Tempe did not recoup any attorney's fees in that extensive litigation. Claimant hopes that this Notice of Claim can be settled promptly, without need for litigation.

This Notice of Claim is my good faith effort to exhaust my administrative remedies, prior to filing suit in State Court. It should be noted that there is no such requirement to do so in Federal Court. I anticipate your prompt and timely response.

Sincerely,



Daniel Arthur Gutenkauf
1847 E. Apache Blvd. #41
Tempe, Arizona 85281
Tel: (480) 966-7018

Computation of Amounts Claimed
for Daniel Arthur Gutenkauf

Payment of Superior Court Appeal Fee	\$146.00
Payment for 2 audiotapes of Court hearing	34.00
Payment for Transcript of Traffic hearing	485.00
Payment for Copies of Traffic appeal cases	23.50
Payment for Copies of Traffic appeal cases	10.50
	<hr/>
	\$699.00

TEMPE MUNICIPAL COURT
140 EAST FIFTH STREET, SUITE 150
TEMPE, ARIZONA 85281

2011-01-12 AM 11:57

STATE OF ARIZONA,
PLAINTIFF

CASE # 081572704COMPLAINT # TF 100474

vs.

Daniel Arthur Gutenkauf

DEFENDANT

**NOTICE OF APPEAL
ON THE RECORD**

Notice is given that Defendant appeals from the judgment and/or sanction entered in this Court on

02/17/09At which time Defendant was found responsible for 28-701 A

and a sanction was imposed as follows:

\$ 197.00

The Defendant understands the instructions and information set forth in the "Notice of Right To Appeal" and "Appellant Information" documents which include payment for a copy of the record or transcript, the right to post bond to stay enforcement of the judgment, filing an appellant memorandum with the Tempe Municipal Court, paying a filing fee to the Superior Court and failure to complete all appeal stages may result in the dismissal of the appeal and reinstatement of the judgment.

Daniel Arthur Gutenkauf

Defendant (Please Print)

Defendant's Attorney (Please Print)

Address

1847 E. Apache Blvd. #41

Attorney's Address

City, State, Zip

Tempe AZ 85281

City, State, Zip

Phone Number

(480) 966-7018

Phone Number

Bar Number

Date

3-2-09

Defendant/Attorney Signature

FOR COURT USE

Date Received: 3/2/09By: JRAProsecutor: N/A

Notified on: _____

Appeal Bond Posted \$ 197Tape/Transcript paid \$ 34Tape/Transcript Completed: yesCourt Record to be Transmitted by: JRA

H:\Civil Division Forms\Notice of Appeal on the Record
effective 12/01/02

WHITE - SUPERIOR COURT

YELLOW - PROSECUTOR

PINK - MUNICIPAL COURT

GOLDENROD - DEFENDANT

REQUEST FOR COURT RECORDS

Pursuant to Rule 29, Rule of the Supreme Court, and the Supreme Court Records Retention and disposition schedule, no CRIMINAL CASE RECORDS are available which are more than (5) years old. No TRAFFIC CASE RECORDS are available which are more than one (1) year old.

Requested By: Daniel Arthur Gutenkauf Date of Request: 3-2-09

Address: 1847 E. Apache Blvd #41

City: Tempe State: AZ Zip Code: 85281

Phone Number: (480) 966-7018

☐ View only (no charge) ☐ Copies (\$.50 per page)

☒ Audio Tape Recording (\$17 per tape) *over 90 minutes*

☐ Certified Copies (\$17 per case plus copy charge)

☐ Video Tape Recording (\$25 per tape)

REQUESTS WILL NOT BE PROCESSED WITHOUT PAYMENT**Requesting the following documents:**

☐ Complaint/Citation

☐ Judgment of Guilt

☐ Plea Proceedings

☐ MVD Abstract

☐ Waiver of Counsel

☐ Notice of Appearance

☐ Sentence Information

☐ Fingerprint

☐ Other: _____

FOR THE FOLLOWING INDIVIDUAL:

(Last Name)

(First Name)

(Middle)

Social Security Number _____ Date of Birth _____

FOR THE FOLLOWING:

☒ Case Number 08157270-4 ☐ Citation(s) _____

☐ Date of Incident _____ ☐ Type of Charge _____

☐ Other Information _____

☐ Other Information _____

***Standard time frames to produce records:**

1. Open Cases - Same day
2. Closed Cases - Approximately 3-5 business days.

☒ Please call me at: (480) 966-7018 for pick up.

NOTE: Failure to retrieve records within 10 business days will result in the records being mailed.

☐ Please fax records to: (_____) _____

☐ Mail to: _____

(Street Address)

(City)

(State)

(Zip Code)

Records will be mailed via U.S. Postal Service

COURT USE ONLY

The Court Fee, per A.R.S. 22-40 b:

*per ARS 12-115 a 15% State Surcharge is included in cost per page

☐ Copies @ \$.50 per page: \$ _____

☐ Certified @ \$17.00 per case plus \$.50 per page \$ _____

☒ Audio Tape @ \$17.00 per tape \$ ~~10.00~~ 5.34

☐ Video Tape @ \$25.00 per tape \$ _____

☐ Background Check @ \$17.00 per page (Maximum of 10 names per page) \$ _____

TOTAL AMOUNT DUE: \$ 5.34

Clerk: [Signature] Date Paid: 3/2/09

**CLERK OF THE COURT
SUPERIOR COURT OF ARIZONA**

Micheal K Jeanes
Clerk

**MARICOPA COUNTY
201 West Jefferson
Phoenix, Arizona 85003**

(602) 506-3676
Fax (602) 506-7684
TDD (602) 506-3211

STATE OF ARIZONA

Appellee

Vs

DANIEL ARTHUR GUTENKAUF

Appellant

CASE NO. LC2009-000408-001DT
NOTICE TO APPELLANT RE: PAYMENT
OF SUPERIOR COURT APPEAL FEE

CIVIL TRAFFIC APPEAL FROM
TEMPE MUNICIPAL COURT
081572704

To the appellant in the above matter, please be advised as follows:

1. The appeal in the above matter has been docketed with the Superior Court. Pursuant to the rules of appellate procedure, you are required to pay an appellate filing fee to the Clerk of Superior Court.
2. Pursuant to A.R.S. 12-284, a payment of one hundred forty six dollars (\$146.00) must be received within **thirty (30) calendar days** of the day of this notice stated below.
3. Payment must be by cash, check, money order, or cashier's check, payable to the "Clerk of Superior Court". Please include any assigned Superior Court case number on the face of any payment you send to the court. Mail payment to Clerk of Court, 201 W Jefferson, Phoenix AZ 85003. Please **DO NOT** send cash.
4. You are advised that, if the appeal fee is not timely paid, your appeal will be dismissed without further notice and your case sent back to the trial court.
5. If you cannot afford to pay the above fee, please come in to Superior Court to fill out a deferral. The forms can also be downloaded at www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter. The forms must be filled out and approved before the deadline expires.

If you have any questions, please either write to the above address, Attention: LCA Notice Desk – DCMS-FC/CV, or call 506-3427. Contact via a Telecommunications Device for the Deaf (TDD) is available by calling 506-3211.

Dated: 06/11/2009

DANIEL A GUTENKAUF
1847 E APACHE BLVD #41
TEMPE AZ 85281

MICHAEL K JEANES
Clerk of the Superior Court

By: 

Deputy Clerk

THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT AMOUNT BOX AND THERMOCHROMIC. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.

ISSUING AGENT **Case No. LC2009-000408-001 DT** 75-53
919

SAFeway **MoneyGram** 06/17/2009
Money Orders

INTERNATIONAL MONEY ORDER 6836562058
MONEY ORDER

6836562058
MONEY ORDER

▼ PAY ONLY THIS AMOUNT ▼

***146998

ONE HUNDRED ****
FORTY-SIX *****
DOLLARS/00/CENTS

PAY TO THE ORDER OF: **Clerk of the Superior Court**
PAGAR A LA ORDEN DE: **IMPORTANT - SEE BACK BEFORE CASHING**

Daniel Arthur Lutenkaul
PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR
PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE.

ADDRESS/DIRECCION: **1847 E. Apache Blvd #41**
Payable Through: **Wells Fargo Bank**
South Central, N.A.
Anchorage, Alaska

ISSUER/DRAWER: **Tempe, AZ 85281**
MONEYGRAM PAYMENT SYSTEMS, INC.

62204148781487
2017103168161058

TO AUTHENTICATE RUB CIRCLE
PARA AUTENTICAR RESTREGAR EL CIRCULO

00919005330683 65620587 90

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature x M Davis <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) M Davis C. Date of Delivery 6/25/09</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p>Clerk of Court 201 W. Jefferson Phoenix, AZ 85003</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7008 1140 0000 0588 9940</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004

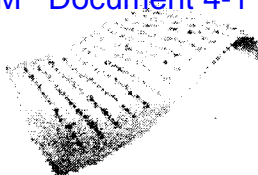
102595-02-M-1540

Specialized
Docuprep
Services, Inc.

13225 North 24th Avenue

Phoenix, Arizona 85029

(602) 363-8647



INVOICE

SOLD TO:
Mr. Daniel A. Gutenkauf
(480) 522-6257 (cell)
(480) 966-7018 (home)

INVOICE NUMBER SDS31562 - EIN 86-0830583
INVOICE DATE April 30, 2009
TERMS Due on Receipt
CLIENT NO.
CUST. CLIENT NO. State v. Gutenkauf

QTY	DESCRIPTION	PRICE	AMOUNT
N/C	Per Diem	40.00	0.00
95	Transcript of recorded traffic hearing 2/17/08 (expedited.)	5.00	475.00
N/C	Copies of both above-mentioned transcript		
2	Binding	5.00	10.00
1	Retainer	-100.00	-100.00
SUBTOTAL			385.00
			0.00
			\$385.00
			TOTAL DUE

THANK YOU FOR YOUR BUSINESS!

Research for
Photo Speed Appeal Cases
Daniel Arthur Gutenkauf

Legal Research for
Photo Speed Appeal Cases
Daniel Arthur Gutenkauf

MICHAEL K. JEANES
CLERK OF THE SUPERIOR COURT
MARICOPA COUNTY, ARIZONA
WWW.CLERKOF COURT.MARICOPA.GOV

MICHAEL K. JEANES
CLERK OF THE SUPERIOR COURT
MARICOPA COUNTY, ARIZONA
WWW.CLERKOF COURT.MARICOPA.GOV

Loc: 0075000

DP# 06053

Description	Qty	Amount
CASE# LC98-000778		
COPIES	047	23.50
TOTAL AMOUNT		23.50
AMOUNT DUE		23.50
Cash		40.00
TOTAL PAID		40.00
CHANGE		16.50

Date 01/20/2009 Time 04:01 PM
Receipt# 00010586775
DANIEL

Keep This Receipt For Your Records

Loc: 0075000

DP# 06053

Description	Qty	Amount
CASE# LC98-00604		
COPIES	021	10.50
TOTAL AMOUNT		10.50
AMOUNT DUE		10.50
Cash		10.50
TOTAL PAID		10.50
CHANGE		0.00

Date 01/20/2009 Time 04:02 PM
Receipt# 00010586791
DANIEL

Keep This Receipt For Your Records

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000408-001 DT

10/06/2009

COMMISSIONER EARTHA K. WASHINGTON

CLERK OF THE COURT
T. Melius
Deputy

STATE OF ARIZONA

ROBERT S HUBBARD

v.

DANIEL ARTHUR GUTENKAUF (001)

DANIEL ARTHUR GUTENKAUF
1847 E APACHE BLVD #41
TEMPE AZ 85281

REMAND DESK-LCA-CCC
TEMPE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Appeal No. 08-157270-4

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The Court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

The appellant appeals the civil finding of responsibility in this case on several grounds. It is unnecessary to address each ground raised as the appeal can be decided by determining if the trial court abused its discretion when it denied the appellant's motion to dismiss on A.R.S. § 28-1561 grounds.

The appellant received a civil traffic ticket and complaint for allegedly violating A.R.S. § 28-701(A) on August 19, 2008. Officer Aaron Colombe of the Tempe Police Department issued the ticket and complaint on September 2, 2008. On the ticket the officer certified "upon reasonable grounds" he believed that the appellant committed the violation. A civil traffic hearing was held on February 17, 2009. Officer Colombe was not present to testify on behalf of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000408-001 DT

10/06/2009

the State instead an aide from the police department's traffic enforcement bureau testified. The aide told the trial court that the department follows a standard procedure before issuing traffic tickets and complaints for violations that are captured on the City's Traffic Enforcement System. The procedure followed entails receiving photos of violations from the City's service provider, Redflex, gathering registration information for the vehicle captured on the photos, and then determining if the person behind the wheel is the same sex as the registered owner of the vehicle; if those parameters are met in a case, the department will issue a ticket to the registered owner. No physical comparison is made between the owner of the vehicle's license photo and the photo of the person behind the wheel to determine if they match. In this case the aide admitted that the ticket issued by Officer Colombe did not contain any physical descriptors for the appellant; this fact showed that no comparison was done against any motor vehicle records of the appellant.

A.R.S. § 28-1561 states that traffic complaints need to contain a certification "by the issuing officer in substance as follows: 'I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law.'" The trial court in finding that the complaint was "properly issued" stated that Officer's Colombe's viewing the citation and doing "a match" was enough. "[T]he decision of whether to grant a defendant's motion for dismissal is within the sound discretion of the trial court. Absent an abuse of discretion, this Court will not disturb the denial of a motion to dismiss."¹ "A court abuses its discretion if it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or "the record fails to provide substantial evidence to support the trial court's finding." *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982)."² In this case the record fails to provide substantial evidence to support the trial court's finding that the officer properly issued the complaint. No reasonable grounds existed for Officer Colombe to issue the complaint to the 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. "Reason" is defined by Merriam's Webster's On-line Dictionary as : **b** : a rational ground or motive <a good reason to act soon> **c** : a sufficient ground of explanation or of logical defense; *especially* : something (as a principle or law) that supports a conclusion or explains a fact <the reasons behind her client's action>³; and "reasonable" is defined as being "in accordance with reason."⁴ Officer Colombe had no idea what the appellant looked like and issued the ticket based on the

¹ *State v. Hansen*, 156 Ariz. 291, 751 P.2d 951 (Ariz., 1988).

² *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, 156 P.3d 1149, 1155 (Ariz.App. Div. 2, 2007).

³ reason. (2009). In *Merriam-Webster Online Dictionary*. Retrieved October 6, 2009, from <http://www.merriam-webster.com/dictionary/reason>.

⁴ reasonable. (2009). In *Merriam-Webster Online Dictionary*. Retrieved October 6, 2009, from <http://www.merriam-webster.com/dictionary/reasonable>

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000408-001 DT

10/06/2009

fact that he is the registered owner of the vehicle and because the person captured in the photo was male. Different variables can exist for a male other than the appellant to be driving the vehicle at the time of the violation; this fact was proven when the appellant showed that both he and his twin brother are listed on the insurance as persons covered to drive the vehicle. Because the procedure adopted by the department did not provide reasonable grounds to issue the ticket to the appellant, the trial court should have granted the appellant's motion to dismiss the case.

IT IS THEREFORE ORDERED reversing the finding of responsibility and the sanction imposed.

IT IS FURTHER ORDERED remanding this matter to the Tempe City Court for all further proceedings consistent with this decision.

1
2 IN THE TEMPE MUNICIPAL COURT
3 COUNTY OF MARICOPA, STATE OF ARIZONA
4

5 STATE OF ARIZONA,)

6 Plaintiff,)

NO. 08-1572704

7 VS.)

8 DANIEL ARTHUR GUTENKAUF,)

9 Defendant.)
10

11
12
13
14
15 TRANSCRIPT OF RECORDED TRAFFIC HEARING

16 February 17, 2009
17 Tempe, Arizona
18

19 Prepared for:

20 Mr. Daniel Arthur Gutenkauf
21
22
23

24 (Copy)

25 Transcribed by: Sherie Thorn
Phone: (602) 363-8647

1 Q. But again there --

2 A. The -- the registration, the license plate of
3 the vehicle, when it was retrieved by Redflex, that was
4 the information that existed. That's the information that
5 we -- it's the only information that we have when we
6 review these violations at that time.

7 Q. Uh-huh. And so again, it was strictly a -- a
8 gender match. There was -- there was no other identifying
9 characteristics to prove that it was Daniel Arthur
10 Gutenkauf, and not Dennis Michael Gutenkauf; is that
11 correct?

12 A. Correct.

13 Q. So basically what -- would it be fair to say
14 that there was a 50/50 chance that the person pictured in
15 the State's exhibit, wearing sunglasses in the van, how
16 did you or Officer Colombe determine from that picture,
17 with sunglasses on, that that was Daniel Arthur Gutenkauf
18 and not Dennis Michael Gutenkauf?

19 A. We can't -- we don't have any type of -- at that
20 time we didn't have any type of driver's license
21 photograph to compare them to.

22 Q. You didn't have any photo ID to compare at that
23 time?

24 A. Correct.. And there is still no driver's license
25 photograph available for Daniel Arthur Gutenkauf.

1 document or who certified that it's -- is a true and
2 correct copy?

3 A. No, we've -- I've never had an affidavit. I've
4 never had anybody submit an extra piece of paper. That is
5 something that we believe that it is true and correct and
6 that's what we submit.

7 Q. So it's -- so would it be correct to say that
8 there's no certification or authentication that this is a
9 true and correct representation of what actually occurred,
10 and there's no name of an individual identified as having
11 certified this information; is that correct?

12 A. It's -- Redflex is the only people that are
13 going to have -- know who, what, when, where, and how.

14 Q. Hm.

15 A. The custodian of records of Redflex would have
16 that information, not --

17 Q. And who would that be?

18 A. Who's the custodian of records?

19 Q. Yes.

20 A. I believe his name is Bill Harper.

21 Q. Bill Harper, that sounds familiar. I think I've
22 heard of his name in another photo radar case. So he --
23 Bill Harper is the custodian of record, but did Bill
24 Harper prepare this Scattergram?

25 A. I don't know.

1 have the dates when the testing was done? I didn't --

2 A. Correct. I believe it was 8/15 and --

3 Q. I didn't get a chance to examine those.

4 A. -- and 9/15.

5 MR. GUTENKAUF: If I may, I'll just take a look
6 at these.

7 BY MR. GUTENKAUF:

8 Q. Okay. Now this Exhibit 4, I just -- this is the
9 first chance I've had to actually read this document, so
10 bear with me. Speed verification, camera code, and it has
11 the technician's initials MD, lane one, lane two, lane
12 three, so you mentioned earlier that the vehicle in
13 question would have been in the center lane; is that
14 correct?

15 A. Correct.

16 Q. So that would -- would that be lane two?

17 A. Correct.

18 Q. Okay. And there is a certification at the
19 bottom of this document which says: "I, Matthew J. DeGraw
20 certify that the speed detection system at 200 South Rural
21 Road was verified for speed and accuracy and tested on
22 August 15th, 2008, in accordance with the most current
23 documentation at the time of testing." So it was tested
24 four days before the alleged violation?

25 A. Correct.

City gets \$1.56 million from photo enforcement

Annual take less than 1% of its general fund

By Megan Boehnke

THE REPUBLIC | AZCENTRAL.COM

From the flash of the camera to the bottom line of the Tempe general fund, tracking photo-enforcement citations in the city is all about numbers.

And for the city, there's one number in the end: \$1.56 million.

That's what Tempe collected last year in violations snapped by the city's 10 cameras. All of the money goes into the city's general fund.

Anytime "million" is attached to the end of a dollar figure, it sounds like a lot, but Tempe's financial services manager, Jerry Hart, says that's less than one percent of the general-fund budget, which was \$173 million last year.

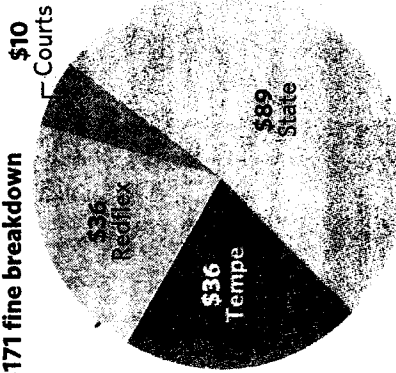
It's money, he says, that's relied on for basic city operations every year.

"It's part of the budget we put together," he said. "Any revenues we iden-

Tempe gets \$36 a ticket

Photo-enforcement fines bring \$1.56 million into the city's general fund, about one-fifth of the fine that violators pay.

\$171 fine breakdown



Source: Tempe City Courts
PATRICIA LAPADULA/
THE REPUBLIC

tity are used in the general fund to offset the services we provide."

Those services include Police and Fire departments, parks, building inspectors and human resources — "The main ser-



MEGAN BOEHNKE/THE REPUBLIC

The photo-enforcement camera just south of Rio Salado Parkway on Rural Road clicked more than half of Tempe's photo citations in 2008.

vices the city provides to our citizens," Hart said. "It's used to support those."

What's left for Tempe from the nearly 100,000 citations that drivers pay each year is \$1.56 million.

Each citation costs the driver \$171. About \$89 of that goes to fees to the state, mandated by law to go into six state funds.

Then there are court fees: \$20 of each ticket goes to the state's probation program and \$10 to the city court for its technology and security.

There's \$35 per ticket to Redflex, the company the city contracts to install and operate the cameras.

The city receives \$10 from each ticket for the Police Department, funneled to the general fund and earmarked specifically for public safety. Another \$26 goes to the general fund with no limitations on its use.

But it doesn't stop there.

The city budgets its expenses for operating the program: That's six court-services employees to process the tickets, a hearing officer, two enforcement aides to work in the Police Department, and partial salaries for other court and police supervisory positions.

What's left for Tempe from the nearly 100,000 citations that drivers pay in Tempe each year is that \$1.56 million.

Tempe rushes projects list to governor for share of stimulus money

City seeking \$205 mil for a variety of uses

By Dianna M. Nájuez

THE REPUBLIC | AZCENTRAL.COM

Hoping for an edge on securing state stimulus money, Tempe rushed Wednesday to send a list of infrastructure projects to Gov. Jan Brewer, Tempe Govern-

Despite uncertainty on how Brewer would manage the infusion of federal funds, Ramonas said Tempe should be ready with its list within eight days.

In addition to targeting ready-to-launch projects, Ramonas said the federal government had set other criteria for funding.

Projects could also be selected according to the amount of "temporary jobs created (during construction) and permanent jobs (created) as a result of the fin-

of Tempe says we're ready to go, people in the federal delegation as well as the state house can believe it."

The federal government attached timelines to allocating and using the funds. Ramonas advised Tempe that the state could have about 60 days to "obligate the dollars ... (and) the dollars should start flowing within 120 to 180 days."

President Barack Obama has also pushed for transparency and account-

§ 28-1560**TRANSPORTATION**
Title 28**Historical and Statutory Notes****Source:**

Laws 1950, 1st S.S., Ch. 3, § 176.2.
Code 1939, Supp.1952, § 66-187b.

A.R.S. former § 28-1060.
Laws 1977, Ch. 111, § 1.
Laws 1978, Ch. 201, § 484.
Laws 1992, Ch. 324, § 6.

Cross References

Classification of offenses, see § 13-601 et seq.
Penalties for misdemeanor, see § 28-1521.
Restitution and fines, see § 13-801 et seq.
Sentences of imprisonment, see § 13-701 et seq.

Library References

Automobiles ¶324.
Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1311 to 1313, 1315
to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 28-1561. Certification of uniform traffic complaint forms; false certification

A. Uniform traffic complaint forms need not be sworn to if they contain a form of certification by the issuing officer in substance as follows: "I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law."

B. A false certification under the provisions of subsection A is perjury.

Added as § 28-3761 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-1561 by Laws 1996, Ch. 76, § 6, eff. Oct. 1, 1997.

Historical and Statutory Notes**Source:**

A.R.S. former § 28-1062.

Laws 1962, Ch. 67, § 1.
Laws 1983, Ch. 271.

Cross References

Certified report,

Blood alcohol concentration of .10 per cent or more, see § 28-1385.

Refusal to submit to blood, breath or urine test, see § 28-1321.

Driving under the influence, implied consent, see § 28-1321.

Protection of state property, see § 41-795.

Regulation of traffic and parking by board of regents, see § 15-1627.

Suspension of driver's or identification license or privilege to operate a motor vehicle, see § 28-3309.

Law Review and Journal Commentaries

Focus on photo radar. Susan J. Kayler, 34
Ariz.Att'y 13 (June 1998).

Library References

Automobiles ¶351.1.
Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1344, 1365 to 1371,
1397 to 1400, 1443, 1473, 1486 to 1487,

CIVIL TRAFFIC
Ch. 5

1496, 1508, 151
1544, 1546 to 154

Construction and app**1. Construction and**

The Uniform Traf
more than a citation
and is not a warrant
(1967) 102 Ariz. 20, 4
¶ 351.1

Former section pr
forms or traffic com
to if they contain cer
cer, that he had rea

ARTICLE 4

Boating while intox
Civil traffic violation
Fines, penalties, su
§ 28-1601.
Jury trial, right to de

Certification of class
Certification of scho

§ 28-1591.

A. A violatio
ing a statute go
civil matter as
statute provides

B. This arti
subsequent sun
issued or served

C. If it is ne
a satisfactory r
the summons
provided to the
violation by the
complaint is co

Added as § 28-3
§ 28-1591 and a

¹ Section 28-601

§ 13-2701**CRIMINAL CODE**
Title 13

2. "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

3. "Sworn statement" means any statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement whether or not given in connection with an official proceeding. Added by Laws 1977, Ch. 142, § 88, eff. Oct. 1, 1978. Amended by Laws 1984, Ch. 291, § 1.

Historical and Statutory Notes**Source:**

Laws 1953, Ch. 97, § 2.

Code 1939, Supp.1953, § 43-4201d.
A.R.S. former § 13-565.

Library References

Perjury ⇨ 1 to 41.
WESTLAW Topic No. 297.
C.J.S. Perjury §§ 2 to 61.

Arizona Practice 1, Law of Evidence, Livermore et al.

Notes of Decisions**Validity 1****1. Validity**

Definition of "statement" for purposes of perjury and false swearing statutes, §§ 13-2701

and 13-2702, was not constitutionally overbroad, even though definition did not limit the subject matter into which inquiry of the witness could be directed. *Franzi v. Superior Court of Arizona In and For Pima County* (1984) 139 Ariz. 556, 679 P.2d 1043.

§ 13-2702. Perjury; classification

A. A person commits perjury by making either:

1. A false sworn statement in regard to a material issue, believing it to be false.

2. A false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.

B. Perjury is a class 4 felony.

Added by Laws 1977, Ch. 142, § 88, eff. Oct. 1, 1978. Amended by Laws 1996, Ch. 205, § 1.

Historical and Statutory Notes**Source:**

Pen.Code 901, §§ 116, 117, 122 to 124.
Pen.Code 1913, §§ 111 to 113, 118 to 120.
Rev.Code 1928, §§ 4546, 4548.
Code 1939, § 43-4203.
Laws 1953, Ch. 97, §§ 1, 2.
Code 1939, Supp.1953, §§ 43-4201, 43-4201a, 43-4201e.

A.R.S. former §§ 13-561, 13-563, 13-568, 13-572.

Laws 1976, ch. 116, § 5.

The 1996 amendment by Ch. 205, in subsec. A, inserted paragraph designations, added par. 2, relating to false unsworn declarations, certificates, verifications, and statements, and made corresponding language and punctuation changes.

PERJURY; RELAT
Ch. 27

Elections and electors, p
False document offered
Form of indictment or i
Fraternal benefit societi

Capital punishment
McClennen, 29 Ariz.Att'
Hodgepodge resultin
theme criminalizing lar
18 Ariz.L.Rev. 100 (197
Perjury, proposed civ
L.Rev. 349 (1977).

Perjury ⇨ 1.
WESTLAW Topic No.
C.J.S. Perjury §§ 2 to

See WESTLAW Elect

Administrative proce
judicial proceedings,
U.S.Mich.1995, 115 S.
131 L.Ed.2d 779.

Belief in truth of stater
Construction with othe
Double jeopardy 9
Evidence 11
Materiality of testimon
Nature and elements, §
Official proceeding 5
Presumptions and bur
Purpose 3
Sworn statement 7
Validity 1

1. Validity

This section, under oath in the cour
ing who makes a false
vidual believes to be fa
to the investigation, is
limited so as not to reg
U.S.C.A. Const.Amend
constitutionally overbi
Court of Arizona In
(1984) 139 Ariz. 556, €

This section was not
Franzi v. Superior Co

PRINTING & NOTICES Title 39

PUBLIC RECORDS Ch. 1

§ 39-161

Historical and Statutory Notes

Source:

Civ.Code 1901, § 3810.
Civ.Code 1913, § 4731.
Rev.Code 1928, § 2755.
Code 1939, § 13-106.

Reviser's Notes:

The second sentence of R.C.1928, § 2755 (Code 1939, § 13-106) provided that certified copies of records authorized by law to be made

of deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances which were required or permitted by law to be acknowledged or recorded and which had been so acknowledged or recorded, and any judgment, order or decree of a court of record or the records or minutes thereof, might be received in evidence with like effect as the original. The provision is deleted as covered by Rules of Civil Procedure, Rule 44.

Library References

Lost Instruments Ⓒ2.
WESTLAW Topic No. 246.
C.J.S. Lost Instruments §§ 4, 6.

ARTICLE 4. FALSE INSTRUMENTS AND RECORDS

§ 39-161. Presentment of false instrument for filing; classification

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in § 13-2001.

Amended by Laws 1978, Ch. 201, § 695, eff. Oct. 1, 1978; Laws 1980, Ch. 229, § 44, eff. April 23, 1980.

Historical and Statutory Notes

Source:

Pen.Code 1901, § 113.
Pen.Code 1913, § 108.
Rev.Code 1928, § 4543.
Code 1939, § 43-4702.

Adopted from California, see West's Ann.Penal Code § 115.

The 1978 amendment substituted "or in compliance with established procedure is guilty of a class 6 felony" for "shall be punished by imprisonment in the county jail for not more than one year".

The 1980 amendment added the second sentence.

Cross References

Classification of offenses, see § 13-601 et seq.
Fines, see § 13-801 et seq.
Records defined, agencies of legislative department, see § 41-1350.
Sentences of imprisonment, see § 13-701 et seq.
State grand jury, investigation and return of indictments, see § 21-422.

Law Review and Journal Commentaries

Responding to a government environmental investigation: Shaping the defense. Francis J. Burke, Jr., Karen A. Potts, Leigh Lani Brown, Robin L. De Respino and Michael R. Hall, 34 Ariz.L.Rev. 509 (1992).

Library References

Fraud Ⓒ68.
WESTLAW Topic No. 184.

ORGANIZED CRIME AND FRAUD

Ch. 23

§ 13-2314.04. Racketeering; unlawful activity; civil remedies by private cause of action; definitions

A. A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity, or by a violation of § 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation. If the person against whom a racketeering claim has been asserted, including a lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim. No person may rely on any conduct that would have been actionable as fraud in the purchase or sale of securities to establish an action under this section except an action against a person who is convicted of a crime in connection with the fraud, in which case the period to initiate a civil action starts to run on the date on which the conviction becomes final.

B. The superior court has jurisdiction to prevent, restrain and remedy a pattern of racketeering activity as defined by this section or a violation of § 13-2312 involving a pattern of racketeering activity, after making provision for the rights of all innocent persons affected by the violation and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Before a determination of liability these orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to damage or other remedies or restraints pursuant to this section as the court deems proper.

D. After a determination of liability these orders may include, but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.

2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

3. Ordering dissolution or reorganization of any enterprise.

4. Ordering the payment of up to treble damages to those persons injured by a pattern of racketeering activity or a violation of § 13-2312 involving a pattern of racketeering activity.

5. Prejudgment interest on damages, except that prejudgment interest may not be awarded on any increase in the damages authorized under paragraph 4 of this subsection.

CRIMINAL CODE
Title 13

he joint legislative
all monies and all
information about
ate fails to file a
is no good cause
ie county attorney
t of the political
all be responsible
that county and
mission at the time
of this section is

r 30 of each year,
l county attorney
ubdivision reports
ch comprehensive
er of the house of
udget committee.
7, § 10; Laws 1991,
1994, Ch. 219, § 4.

e blended together as
to authority of § 41-

to 9.
r Influenced and Cor-
34.

ern expenditures from
ig funds. Op.Atty.Gen.

Exhibit B

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



May 5, 2010

Daniel Gutenkauf
1847 E. Apache Blvd., #41
Tempe, AZ 85281

Dear Mr. Gutenkauf:

The following is in response to your May 4, 2010 Public Records Request.

Date of employment for David McAllister: 4/28/08-present
Salary for David McAllister (annual base rate): \$68,251.04

If you have questions, I can be reached at 480-350-8576.

Sincerely,

A handwritten signature in cursive script that reads 'Susan L. Buck'.

Susan L. Buck
HR Technician

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



May 5, 2010

Daniel Gutenkauf
1847 E. Apache Blvd., #41
Tempe, AZ 85281

Dear Mr. Gutenkauf:

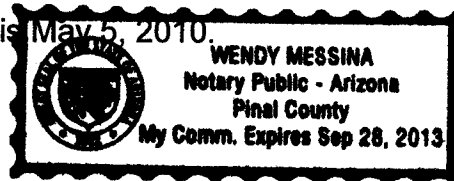
The following is in response to your May 4, 2010 Public Records Request for a "certified copy of loyalty oath of office for David McAllister".

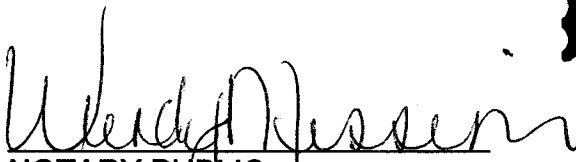
I, Susan Buck, certify that the attached Loyalty Oath signed by David McAllister is a true and correct copy of the original on file with the City of Tempe Human Resources Department.


Susan Buck, HR Technician

Before me personally appeared Susan Buck, a Custodian of Records for the City of Tempe Human Resources Department, who signed the same for the purposes therein contained.

Subscribed and sworn to me before this May 5, 2010.




NOTARY PUBLIC

Attachments (1)

STATE OF ARIZONA

CITY OF TEMPE

LOYALTY OATH

I, the undersigned, hereby execute this document in compliance with A.R.S. §38-231.

STATE OF ARIZONA)
 : ss.
COUNTY OF MARICOPA)

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of my position according to the best of my ability, so help me God (or so I do affirm).



Employee Signature

Exhibit C

PUBLIC OFFICERS AND EMPLOYEES

PUBLIC OFFICERS AND EMPLOYEES

domestic, and that I will faithfully and impartially discharge the duties of the office of _____ (name of office) _____ according to the best of my ability, so help me God (or so I do affirm)

(signature of officer or employee)

- F. For the purposes of this section, “officer or employee” means any person elected or appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.
- Amended by Laws 1961, Ch. 108, § 5, eff. March 30, 1961; Laws 1978, Ch. 201, § 669, eff. Oct. 1, 1978; Laws 2003, Ch. 101, § 1.

Historical and Statutory Notes

The 2003 amendment by Ch. 101, rewrote the section, which had read:

“A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce § 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies and independent offices.

"B. For the purposes of this section, the term officer or employee means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

"C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

"D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

"State of Arizona, County of _____, I, _____
(type or print name)
do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of _____ (name of office) according to the best of my ability, so help me God (or so I do affirm).

"signature of officer or employee)"

Exhibit D

PUBLIC OFFICERS AND EMPLOYEES

Administrative Code References

Applicant filing fee, bond, and bond filing fee, see A.A.C. R2-12-1202 et seq.

Research References

Treatises and Practice Aids
HRS Fair Employment Practices § 26:1, Introduction.
HRS Fair Employment Practices § 26:52, Alternative State Officer Or Employee Loyalty Oath.

§ 38-253. Filing oaths of record

- A. The official oaths of state elective officers shall be filed of record in the office of the secretary of state. The official oaths of all other state officers and employees shall be filed of record in the office of the employing state board, commission or agency.
- B. The official oaths of elective county and elective precinct officers shall be filed of record in the office of the county recorder, except the oath of the recorder, which shall be endorsed upon their bond and filed with the secretary of state. The official oaths of all other county and precinct officers and employees shall be filed of record in the office of the employing county or precinct board, commission or agency.
- C. The official oaths of all city, town or municipal corporation officers or employees shall be filed of record in the respective office of the employing board, commission or agency of the cities, towns and municipal corporations.
- D. The official oaths of all officers and employees of all school districts shall be filed of record in the school district office.
- E. The official oaths of all officers and employees of each public educational institution except school districts shall be filed of record in the respective offices of the public educational institutions.
- F. The official oath or affirmation required to be filed of record shall be maintained as an official record throughout the person's term, appointment or employment plus a period of time to be determined pursuant to §§ 41-1347 and 41-1351.
- Amended by Laws 1961, Ch. 108, § 6, eff. March 30, 1961; Laws 1969, Ch. 40, § 1; Laws 1977, Ch. 44, § 2; Laws 2000, Ch. 88, § 50; Laws 2008, Ch. 80, § 9, eff. April 23, 2008.

ARTICLE 5. OFFICIAL BOND

§ 38-251. State officers and employees blanket bond; amount; approval

Research References

Treatises and Practice Aids
11 Arizona Practice A.R.S. § 7, Establishment Of Permanent Funds; Segregation, Investment And Distribution Of Monies.

§ 38-252. Repealed by Laws 2003, Ch. 70, § 7, eff. April 17, 2003, retroactively effective to Jan. 1, 2001

Historical and Statutory Notes

The repealed section, added by Laws 1972, Ch. 42, § 2, related to county officers and employees blanket bond. It was derived from:
Civ.Code 1901, §§ 176-179, 186, 200, 1069, 1071.
Civ.Code 1918, §§ 138-136, 144, 190, 2519, 2520, 2522.
Laws 1923, Ch. 5, § 1.
Rev.Code 1928, §§ 67, 832, 833, 2480.
Laws 1929, Ch. 39, § 9.
Laws 1931, Ch. 78, § 1.
Code 1939, §§ 12-306, 14-101, 17-510, 17-511, 17-1509.
A.R.S. former §§ 11-907, 38-252.
Laws 2003, Ch. 70, § 9, effective April 17, 2003, provides:
"Sec. 9. Retroactivity

PUBLIC OFFICERS AND EMPLOYEES § 38-291

"This act is effective retroactively to from and after December 31, 2000 except if a person had a claim against the bond in a county that had a bond on the effective date of this act, then that action may proceed against the bond until any statute or repose or limitation bars the action."

§ 38-272. Affidavit of plaintiff in action to recover on bond that defendant owns real property; notice to recorder

Research References

Treatises and Practice Aids
11 Arizona Practice A.R.S. § 12-1191, Notice Of Pendency Of Action Affecting Title To Real Property; Filing; Constructive Notice
To Purchaser Or Encumbrancer; Release Of Notice Of Pendency Of Action; Failure To Issue Release...

§ 38-273. Recording notice of ownership of real property; lien of judgment

Research References

Treatises and Practice Aids
11 Arizona Practice A.R.S. § 12-1191, Notice Of Pendency Of Action Affecting Title To Real Property; Filing; Constructive Notice
To Purchaser Or Encumbrancer; Release Of Notice Of Pendency Of Action; Failure To Issue Release...
11A Arizona Practice A.R.S. § 33-961, Filing Judgments For Payment; Recording Copy To Perfect Lien Against Real Property; Information Statement.

ARTICLE 6. VACANCY IN OFFICE

§ 38-291. Vacancy defined

An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office:

1. Death of the person holding the office.
2. Insanity of the person holding the office, when judicially determined.
3. Resignation of the person holding the office and the lawful acceptance of the resignation.
4. Removal from office of the person holding the office.
5. If the office is elective, the person holding the office ceasing to be a resident of the state, or, if the office is local, or from a legislative or congressional district, the person holding the office ceasing to be a resident of the district, county, city, town or precinct for which he was elected, or within which the duties of his office are required to be discharged.
6. Absence from the state by the person holding the office, without permission of the legislature, beyond the period of three consecutive months.
7. The person holding the office ceasing to discharge the duties of office for the period of three consecutive months.
8. Conviction of the person holding the office of a felony or an offense involving a violation of his official duties.
9. Failure of the person elected or appointed to such office to file his official oath within the time prescribed by law.
10. A decision of a competent tribunal declaring void the election or appointment of the person elected or appointed to the office.
11. Failure of a person to be elected or appointed to the office.
12. A violation of § 38-296 by the person holding the office.

Amended by Laws 1971, Ch. 120, § 1; Laws 1972, Ch. 163, § 2; Laws 1984, Ch. 201, § 1; Laws 1984, Ch. 275, § 1; Laws 2008, Ch. 70, § 8, eff. April 17, 2008, retroactively effective to Jan. 1, 2001.

Exhibit E

NOTICE OF CLAIM AGAINST THE STATE OF ARIZONA

Claim must be filed in accordance with A.R.S. § 12-821.
Please type or print legibly. Press hard when completing information.
All blanks MUST be completed.

Claimant's Name: Daniel Arthur Gutenkauf

Address: 1847 E. Apache Blvd #41 City Tempe State AZ Zip 85281

Phone # (Home): _____ Work: _____ Date of Birth: _____

DATE OF OCCURRENCE	TIME OF OCCURRENCE	LOCATION OF OCCURRENCE
<u>October 6, 2010</u> (2009 10/6)	_____ am/pm	_____

Identify the circumstances under which the damage or injuries were sustained, the cause thereof and the nature and extent of the damages and/or injuries. List the State agency if known. You may attach additional pages if necessary.

(see attachment)

Amount of Claim \$ <u>1,018,816.00</u>	<p>In order for a claim to be valid, ARS 12-821.01(A) requires the claimant to include a specific amount for which the claim can be settled. The statute requires the claim be filed with the State of Arizona within 180 days after the cause of action accrues.</p>
<p>Claimant Signature: <u>Daniel Arthur Gutenkauf</u> Date: <u>4-2-2010</u></p>	

NOTICE OF CLAIM AGAINST THE STATE OF ARIZONA

Claim must be filed in accordance with A.R.S. § 12-821.
Please type or print legibly. Press hard when completing information.
All blanks MUST be completed.

RECEIVED
AZ ATTORNEY GENERAL
2010 APR -2 PM 4:36

Claimant's Name: Daniel Arthur Gutenkauf
Address: 1847 E. Apache Blvd #41 City Tempe State AZ Zip 85281
Phone # (Home): _____ Work: _____ Date of Birth: _____

DATE OF OCCURRENCE

October 6

TIME OF OCCURRENCE

am/pm

LOCATION OF OCCURRENCE

Identify the circumstances under which the damage or injuries were sustained, the cause thereof and the nature and extent of the damages and/or injuries. List the State agency if known. You may attach additional pages if necessary.

(see attachment)

Amount of Claim \$ 1,018,816.00

In order for a claim to be valid, ARS 12-821.01(A) requires the claimant to include a specific amount for which the claim can be settled. The statute requires the claim be filed with the State of Arizona within **180 days** after the cause of action accrues.

Claimant Signature: Daniel Arthur GutenkaufDate: 4-2-2010

NOTICE OF CLAIM AGAINST THE STATE OF ARIZONA

Claim must be filed in accordance with A.R.S. § 12-821.
Please type or print legibly. Press hard when completing information.
All blanks MUST be completed.

RECEIVED

APR 02 REC'D

AW

Claimant's Name: Daniel Arthur Gutenkauf
Address: 1847 E. Apache Blvd #41 City Tempe State AZ Zip 85281
Phone # (Home): _____ Work: _____ Date of Birth: _____

DATE OF OCCURRENCE	TIME OF OCCURRENCE	LOCATION OF OCCURRENCE
<u>October 6, 2010</u> (2009)	<u>2:45</u> am/pm	

Identify the circumstances under which the damage or injuries were sustained, the cause thereof and the nature and extent of the damages and/or injuries. List the State agency if known. You may attach additional pages if necessary.

(see attachment)

Amount of Claim \$ 1,018,816.00

In order for a claim to be valid, ARS 12-821.01(A) requires the claimant to include a specific amount for which the claim can be settled. The statute requires the claim be filed with the State of Arizona within **180 days** after the cause of action accrues.

Claimant Signature: Daniel Arthur Gutenkauf Date: 4-2-2010

NOTICE OF CLAIM AGAINST THE STATE OF ARIZONA

In accordance with A.R.S. 12-821

FACTS

April, 2, 2010

I am submitting a Notice of Claim, pursuant to **A.R.S. 12-821.01**. This claim involves a financial loss to me, incurred by having to file an appeal from an alleged civil traffic violation of **A.R.S. 28-701 A**. It was based on a photo enforcement traffic ticket issued by Tempe Police Officer Aaron Colombe, and the Complaint listed STATE OF ARIZONA as the Plaintiff. The appellate court reversed and the finding of responsibility and the sanction imposed, in its Order dated 10/06/2009.

I submitted a Notice of Claim to City of Tempe on March 9, 2010. Although the City has agreed to settle my claim for actual damages, the terms of release and settlement of claim are not satisfactory to me. Those terms would preclude me from collecting from any and all other defendants. A settlement under those terms would deny me the ability to collect from other responsible defendants, according to the collateral source rule.

I believe that there are other persons who need to be held accountable and held liable for the tortious activities of other state agencies, other individuals, and corporations such as Redflex. Therefore I am filing this Notice of Claim with the State within the 180 day time limit, to exhaust my administrative remedies, prior to filing a civil complaint in court.

I understand that, according to **A.R.S 12-820.01 Absolute immunity** A public entity shall not be liable for acts and omissions of its employees constituting either of the following:

1. The exercise of a judicial or legislative function.
2. The exercise of an administrative function involving *the determination of a* fundamental governmental policy.

However, the Arizona Supreme Court, in its landmark case of *Ryan v. State* 134 Ariz. 308, reaffirmed the policy that **liability is the rule and immunity is the exception** in an action against the government involving tortuous conduct. I refer to Vol. 28 Arizona Law Review 49, "**A Separation of Powers Analysis of the Absolute Immunity of Public Entities**".

A public entity acts through its officers and employees. *Bone v. Bowen*, 20 Ariz. 592. The acts and omissions of the public officers and employees give rise to potential liability. *Ryan*, 134 Ariz. at 311. An injured citizen may seek redress **from either the**

public entity or its employee, or both. Courts have held consistently that *respondeat superior* is applicable to the breach of a duty by a governmental employee or agent acting within the scope of employment. *Jesik v. Maricopa County Community College District*, 125 Ariz. 543 (1980) *Patterson v. City of Phoenix*, 103 Arizona 64.

The immunity of a public entity does not protect the public employee in his or her individual capacity when the employee is sued directly for his or her own tortious conduct. See James, *Tort Liability of Governmental Units and Their Officers*, 22 U. Chi.

L. Rev. 610, at 635. Similarly, the official immunity of a public employee may not protect a public entity under an application of *respondeat superior*. *James v. Prince George's County*, 418 A.2d at 1182.

Cause of Action under 42 USC 1983

Government officials performing discretionary functions generally are shielded from liability for civil damages *insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known*. If the law was clearly established, *the immunity defense ordinarily should fail*, since a reasonably competent public official should know the law governing his conduct. *Harlow v. Fitzgerald* 457 US 800, 818-19.

Action for Damages caused by Acts committed pursuant to a Conspiracy

Arizona law recognizes a cause of action for damages caused by acts pursuant to conspiracy, but not for the conspiracy alone in absence of acts taken pursuant to that conspiracy with resulting damage. *In re Hashim* 356 BR. 728.

A conspiracy claim requires an agreement between two or more persons to accomplish an unlawful purpose or a lawful purpose by unlawful means, and accomplish the underlying tort, which in turn caused damages. A civil conspiratorial agreement need not be express; it may be implied by the tortious conduct itself. See *Dawson v. Withycombe*, 163 P. 3d 1034, 216 Ariz. 84 (Ariz. Ct. App. 2007).

Claimant Daniel Gutenkauf has a cause of action for damages arising out of acts committed pursuant to a conspiracy between Tempe traffic enforcement aide Bianca Gallego, who was the State's witness in the civil traffic hearing conducted on 2/17/ 2009. and police officer Aaron Colombe. Officer Colombe's signature (false certification) on the traffic complaint is the evidence of *an overt act* in the furtherance of the conspiracy, which resulted in financial damage to Daniel Gutenkauf. Officer Gallego's appearance and testimony in traffic court, based on Officer Colombe's false certification on the complaint, was *an overt act* in the furtherance of the conspiracy, to accomplish a lawful purpose by unlawful means, i.e. perjury.

At least two Redflex employees were also involved in the conspiracy, namely custodian Bill Harper (page 48 of trial transcript) and Matthew J. McGraw, who provided records of testing certification of the speed detection system. (See State's Exhibit #4 and page 51 trial transcript). Daniel Gutenkauf's damage from the traffic fine (\$197) and his cost to file the appeal (\$699) arose out of acts committed pursuant to a conspiracy between the individuals named above.

It is clear that the City of Tempe, by its contract with Redflex, had an agreement for a common purpose, to collect revenue illegally, by means of the policies of both City of Tempe and Redflex, to issue traffic tickets, based solely on a gender match of the registered drivers who were photographed with Redflex cameras. This policy, which approves the issuing traffic citations based on false certifications, in violation of A.R.S. 28-1561, was the proximate cause of financial damage to Daniel Gutenkauf.

Evidence of the policy of false certification appears in trial transcript of Officer Bianca Gallego's testimony regarding the Tempe Police procedure for accepting and issuing a photo enforcement citation (See page 28, lines 2-25 of trial transcript). Further evidence of the policy of using only a gender match to issue traffic tickets appears in Redflex's manuals, showing the procedure used for accepting or rejecting citations.

To prove conspiracy between state and private parties under section 1983, claimant must show agreement or a meeting of the minds to violate constitutional rights; participants in conspiracy need not know exact details of plan but, to be liable, each participant must at least share common objective of conspiracy. 42 U.S.C.A. 1983, *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, certiorari denied 110 S.Ct. 51, 493 U.S. 809, 107 L.Ed. 2d 20, on subsequent appeal 896 F.2d 403, appeal after remand 944 F.2d 910.

Since the Complaint was filed in the name of STATE OF ARIZONA, the State and its agencies, The Department of Transportation and Department of Public Safety are also complicit in the conspiracy. ADOT is charged with enforcement of motor vehicle statutes, pursuant to **ARS 28-332 B.1**. The Arizona Department of Public Safety, through its highway patrol division, cooperates with the Department of Transportation in enforcement of laws relating to motor vehicles. **ARS 41-1742 A. 4**. DPS has a contract with Redflex to enforce the photo speed tickets, using a procedure based only on a gender match to issue the ticket.

Claimant is therefore naming the **STATE OF ARIZONA**, and its agencies, **ADOT** and **DPS**, and their respective Directors, **Robert Halliday (Director, DPS)** and **John. S. Halikowski (Director, ADOT)**. These State agencies and their Directors knew, or should have known, that the Photo Camera Speed Enforcement ticketing system has been, and is currently being operated in violation of the Certification procedure mandated under **ARS 28- 1561**. These State agencies and Directors are presumed to know the law in Arizona regarding *driver responsibility*, not simply a gender match with the registered driver.

The Arizona Attorney General, Terry Goddard, is also named a Defendant in

this action, since he is legal advisor to both ADOT and DPS. The AG knew, or should have known, that the procedures used by the State agencies and Redflex, were in violation of State law. Yet, he failed to advise his clients to take corrective action.

Compensatory Damages

Although a violation of 42 USC 1983 is actionable for nominal damages without proof of actual injury, substantial damages are available only to compensate for actual injury. *Carey v. Phipps*, 435 US 247, 98 S. Ct. 1042, 55 L.Ed2d 252 (1978)

Under section 1983, a plaintiff is entitled to recover compensatory damages for all injuries suffered as a consequence of the deprivation of a constitutional right, with such damages calculated in most circumstances according to general tort law principles applicable to the type of deprivation proved. *Schiller v. Strangis*, 540 F. Supp 605 (D. Mass. 1982)

Punitive Damages

Punitive damages may be awarded if the plaintiff proves not just intentional interference with the plaintiff's constitutional rights but, in addition, malicious and wanton disregard of those rights. The court also must conclude that actual damages would not suffice to deter the defendant's wrongdoing. *Schiller v. Strangis*, 540 F. Supp 605 (D. Mass. 1982)

One measure of punitive damages is based on 10% of a defendant's salary or a percentage of his property holdings or assets. The amount of punitive damages is generally determined by the jury.

Cause of Action under civil RICO for treble damages

It appears that Daniel Gutenkauf has a cause of action for civil RICO against the City of Tempe for participating in an enterprise engaged in racketeering activity which affects interstate commerce. Claimant may file an action in Superior Court under **A.R.S. 13-2314.04**, or in the alternative, in Federal District Court under **18 USC 1961 and section 1962**. Federal and State Courts may exercise concurrent jurisdiction.

Redflex Traffic Systems, Inc., is also subject to liability under **18 USC 1962 (d)** for its role in a *conspiracy*, in concert with City of Tempe, to violate subsections **(a)-(c) of 18 USCA 1962**. The Seventh Amendment grants the right to a jury trial in civil RICO actions. Since Daniel Gutenkauf was injured in his property by an apparent violation of 18 USCA 1962, he is entitled to recover treble damages under **18 USCA 1964 (c)**.

The **STATE OF ARIZONA, ADOT, DPS, and their respective Directors** appear to be knowing participants in this racketeering activity which affects interstate commerce.

Provision in Arizona Racketeering Act that injured party "may file action in superior court for recovery of treble damages" permits private cause of action and provides that successful plaintiff is entitled to treble damages. **A.R.S. 13-2314, subd. A**, *Sullivan v. Metro Productions, Inc.*, 724 P.2d 1242, 150 Ariz. 573, 62 A.L.R. 4th 643, certiorari denied *Miller v. Sullivan*, 107 S.Ct 1334, 479 U.S. 1102, 94 L.Ed.2d 185

Elements of cause of action under civil RICO

In order to state a claim for damages under RICO, a plaintiff must plead and prove:
 (1) that the defendant has violated the substantive RICO statute, 18 USCA 1962, and
 (2) that the plaintiff has been injured in his business or property by reason of this violation.

Daniel Gutenkauf believes he has all the facts and evidence required to *plead and prove* all four elements of a civil RICO violation, namely (1) unlawful acts or conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. There is ample evidence that there have been at least two predicate acts of racketeering activity (within 5 years for State law, within 10 years for Federal law) that were related and posed a threat of continued criminal activity or were actually part of a demonstrated continuous

chain of activity. The pattern has been verified by the Superior Court's 10/06/2009 statement that: "... *the procedure adopted by the department did not provide reasonable grounds to issue the ticket to the appellant...*". The fact that City of Tempe has received income from nearly 100,000 citations each year, as cited below, shows a clear "pattern of racketing activity" by City of Tempe, in conjunction with Redflex, in its photo enforcement program.

The fact that these photo enforcement traffic tickets are issued only on a gender match, and not on positive identification of the driver, as required under **A.R.S. 28-1561 A**, means that the citations are based on *false certification*, ("**perjury**" under **28-1561 B**, and **ARS 13-2702**). That criminal behavior is compounded by the fact that the false documents (tickets) are sent by means of the U.S. Postal service, in violation of the **Mail Fraud** statute **18 USCA 1341** (affecting interstate commerce). In addition, the false certification of the photo enforcement traffic tickets by officers in the Tempe Police Department are an apparent violation of **A.R.S. 39-161, Presentment of false instrument for filing**. These violations of State law meet the first requirement for civil RICO action.

City of Tempe has received income from nearly 100,000 citations each year from a *pattern of racketeering activity* and used at least some of it, or the proceeds of it, in acquiring, establishing, or *operating an enterprise engaged in interstate commerce*. According to Tempe City Courts, \$10 of each citation goes to the city court for its technology and security, and \$10 goes to the Police Department, and \$26 goes to the general fund. See Arizona Republic, Friday, February 27, 2009, page 10, Tempe News, "**City gets \$1.56 million from photo enforcement**", attached hereto.

The Tempe News article, citing Tempe City Courts as its source of information, shows the distribution of the proceeds from the tickets for operating the enterprise: "...six court-service employees to process the tickets, a hearing officer, two enforcement aides to work in Police Department, and partial salaries for other court and police supervisory positions." While the court personnel may have immunity, the two enforcement aides and police supervisors are subject to liability for participating in the enterprise. They will be named as John Doe and Jane Doe Defendants, and their identities revealed upon Discovery.

Should the State of Arizona deny this Notice of Claim, Daniel Gutenkauf intends to engage in *rigorous discovery* under Rule 26.1 A. R. Civ. P., with Requests for Admissions, Non-Uniform Interrogatories, Request for Production of Documents under Rules 33, 34, and 36 A.R.Civ.P., as well as videotape depositions. Most of the essential issues in this case can already be resolved in Plaintiff's favor on a Motion for Summary Judgment or Partial Summary Judgment.

- (1) violation of **42 USC 1983, Deprivation of rights under color of State law**
- (2) **action for damages** from acts committed pursuant to a conspiracy
- (3) violation of **18 USC 1961 and section 1962 (Federal civil RICO)**
or **A.R.S. 13-2314.04 (State civil RICO)**

Claimant will sue for *treble damages under RICO for fraud*, and will also seek *compensatory* and *punitive damages* from *each* of the participating actors in their personal capacity.

COMPUTATION OF DAMAGES

Traffic fine	\$197.00
Appeal cost	<u>\$699.00</u>
	\$896.00

Compensatory damages

Deprivation of rights (Robert Halliday)	\$ 896
Deprivation of rights (John Halikowski)	\$ 896
Deprivation of rights (Terry Goddard)	\$ 896
Damages from acts done in conspiracy (RH)	\$ 896
Damages from acts done in conspiracy (JH)	\$ 896
Damages from acts done in conspiracy (TG)	\$ 896
Treble damages civil RICO (RH)	\$2688
Treble damages civil RICO (JH)	\$2688
Treble damages civil RICO (TG)	\$2688
Treble Damages RICO (DPS)	\$2688
Treble damages RICO (ADOT)	<u>\$2688</u>
	\$18,816 compensatory

Punitive damages from individuals \$1 million

Total Damages \$1,018,816.00
(One million, eighteen thousand, eight hundred sixteen dollars)

This Notice of Claim is my good faith effort to exhaust my administrative remedies, prior to filing suit in State Court. It should be noted that there is no such requirement to do so in Federal Court. I anticipate your prompt and timely response.

Sincerely,



Daniel Arthur Gutenkauf
1847 E. Apache Blvd. #41
Tempe, Arizona 85281
Tel: (480) 966-7018

TEMPE MUNICIPAL COURT
140 EAST FIFTH STREET, SUITE 150
TEMPE, ARIZONA 85281

STATE OF ARIZONA,
PLAINTIFF

CASE # 081572704
COMPLAINT # TF 100474

vs.

Daniel Arthur Gutenkauf

DEFENDANT

**NOTICE OF APPEAL
ON THE RECORD**

Notice is given that Defendant appeals from the judgment and/or sanction entered in this Court on

02/17/09 At which time Defendant was found responsible for 28-701 A

and a sanction was imposed as follows: \$ 197.00

The Defendant understands the instructions and information set forth in the "Notice of Right To Appeal" and "Appellant Information" documents which include payment for a copy of the record or transcript, the right to post bond to stay enforcement of the judgment, filing an appellant memorandum with the Tempe Municipal Court, paying a filing fee to the Superior Court and failure to complete all appeal stages may result in the dismissal of the appeal and reinstatement of the judgment.

Daniel Arthur Gutenkauf

Defendant (Please Print)

Address

1847 E. Apache Blvd. #41

City, State, Zip

Tempe AZ 85281

Phone Number

(480) 966-7018

Date

3-2-09

Defendant's Attorney (Please Print)

Attorney's Address

City, State, Zip

Phone Number

Bar Number

X Daniel Arthur Gutenkauf
Defendant/Attorney Signature

FOR COURT USE

Date Received: 3/2/09

By: JRA

Prosecutor: N/A

Notified on: _____

Appeal Bond Posted \$ 197

Tape/Transcript paid \$ 34

Tape/Transcript Completed: yes

Court Record to be Transmitted by: JRA

REQUEST FOR COURT RECORDS

Pursuant to Rule 29, Rule of the Supreme Court, and the Supreme Court Records Retention and disposition schedule, no CRIMINAL CASE RECORDS are available which are more than (5) years old. No TRAFFIC CASE RECORDS are available which are more than one (1) year old.

Requested By: Daniel Arthur Gutenkauf Date of Request: 3-2-09

Address: 1847 E. Apache Blvd #41

City: Tempe State: AZ Zip Code: 85281

Phone Number: (480) 966-7018

☐ View only (no charge)

☐ Copies (\$.50 per page)

☒ Audio Tape Recording (\$17 per tape) over 90 min

☐ Certified Copies (\$17 per case plus copy charge)

☐ Video Tape Recording (\$25 per tape)

REQUESTS WILL NOT BE PROCESSED WITHOUT PAYMENT**Requesting the following documents:**

☐ Complaint/Citation

☐ Judgment of Guilt

☐ Plea Proceedings

☐ MVD Abstract

☐ Waiver of Counsel

☐ Notice of Appearance

☐ Sentence Information

☐ Fingerprint

☐ Other: _____

FOR THE FOLLOWING INDIVIDUAL:

(Last Name)

(First Name)

(Middle)

Social Security Number _____ Date of Birth _____

FOR THE FOLLOWING:

☒ Case Number 08157270-4 ☐ Citation(s) _____

☐ Date of Incident _____ ☐ Type of Charge _____

☐ Other Information _____

☐ Other Information _____

***Standard time frames to produce records:**

1. Open Cases - Same day
2. Closed Cases - Approximately 3-5 business days.

☒ Please call me at: (480) 966-7018 for pick up.

NOTE: Failure to retrieve records within 10 business days will result in the records being mailed.

☐ Please fax records to: (____) _____

☐ Mail to: _____

(Street Address)

(City)

(State)

(Zip Code)

Records will be mailed via U.S. Postal Service

COURT USE ONLY

The Court Fee, per A.R.S. 22-40 b:

*per ARS 12-115 a 15% State Surcharge is included in cost per page

☐ Copies @ \$.50 per page: \$ _____

☐ Certified @ \$17.00 per case plus \$.50 per page \$ _____

☒ Audio Tape @ \$17.00 per tape \$ 10.00 + 34

☐ Video Tape @ \$25.00 per tape \$ _____

☐ Background Check @ \$17.00 per page (Maximum of 10 names per page) \$ _____

TOTAL AMOUNT DUE: \$ 34

Clerk: [Signature]

Date Paid: 3/2/09

CLERK OF THE COURT
SUPERIOR COURT OF ARIZONA

Micheal K Jeanes
Clerk

MARICOPA COUNTY
201 West Jefferson
Phoenix, Arizona 85003

(602) 506-3676
Fax (602) 506-7684
TDD (602) 506-3211

STATE OF ARIZONA

Appellee

Vs

DANIEL ARTHUR GUTENKAUF

Appellant

CASE NO. LC2009-000408-001DT
NOTICE TO APPELLANT RE: PAYMENT
OF SUPERIOR COURT APPEAL FEE

CIVIL TRAFFIC APPEAL FROM
TEMPE MUNICIPAL COURT
081572704

To the appellant in the above matter, please be advised as follows:

1. The appeal in the above matter has been docketed with the Superior Court. Pursuant to the rules of appellate procedure, you are required to pay an appellate filing fee to the Clerk of Superior Court.
2. Pursuant to A.R.S. 12-284, a payment of one hundred forty six dollars (\$146.00) must be received within **thirty (30) calendar days** of the day of this notice stated below.
3. Payment must be by cash, check, money order, or cashier's check, payable to the "Clerk of Superior Court". Please include any assigned Superior Court case number on the face of any payment you send to the court. Mail payment to Clerk of Court, 201 W Jefferson, Phoenix AZ 85003. Please **DO NOT** send cash.
4. You are advised that, if the appeal fee is not timely paid, your appeal will be dismissed without further notice and your case sent back to the trial court.
5. If you cannot afford to pay the above fee, please come in to Superior Court to fill out a deferral. The forms can also be downloaded at www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter. The forms must be filled out and approved before the deadline expires.

If you have any questions, please either write to the above address, Attention: LCA Notice Desk – DCMS-FC/CV, or call 506-3427. Contact via a Telecommunications Device for the Deaf (TDD) is available by calling 506-3211.

Dated: 06/11/2009

DANIEL A GUTENKAUF
1847 E APACHE BLVD #41
TEMPE AZ 85281

MICHAEL K JEANES
Clerk of the Superior Court

By: 

Deputy Clerk

THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT AMOUNT BOX AND THERMOCHROMIC. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.

ISSUING AGENT **Case No. LC2009-000408-001DT** 06/17/2009

SAFEWAY **MoneyGram** **Money Orders**

INTERNATIONAL MONEY ORDER

6836562058
MONEY ORDER

6836562058
MONEY ORDER

▼ PAY ONLY THIS AMOUNT ▼

1463098

ONE HUNDRED ****
FORTY-SIX *****
DOLLARS/00/CENTS

62204148781487
2017103168161058

PAY TO THE ORDER OF: **Clerk of the Superior Court**
ORDER DE: **IMPORTANT - SEE BACK BEFORE CASHING**

Daniel Arthur Gutenkaul
PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR
PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS: **1847 E. Apache Blvd #41**
DIRECCIÓN: **Payable Through Wells Fargo Bank South Central, N.A. Anchorage, Alaska**

ISSUER/DRAWER: **MONEYGRAM PAYMENT SYSTEMS, INC.**
Tempe, AZ 85281

TO AUTHENTICATE RUB/CIRCLE PARA AUTENTICAR RESTREGAR EL CIRCULO

68365620587 90

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clerk of Court
201 W. Jefferson
Phoenix, AZ
85003

2. Article Number
(Transfer from service label)

7008 1140 0000 0588 9940

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

- A. Signature **M Davis** ☐ Agent ☐ Addressee
- B. Received by (Printed Name) **M DAVIS** C. Date of Delivery **6/25/09**
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

102595-02-M-1540

Specialized
Docuprep
Services, Inc.

13225 North 24th Avenue
Phoenix, Arizona 85029
(602) 363-8647

INVOICE

SOLD TO:

Mr. Daniel A. Gutenkauf

(480) 522-6257 (cell)
(480) 966-7018 (home)

INVOICE NUMBER SDS31562 - EIN 86-0830583

INVOICE DATE April 30, 2009

TERMS Due on Receipt

CLIENT NO.

CUST. CLIENT NO. State v. Gutenkauf

QTY	DESCRIPTION	PRICE	AMOUNT
N/C	Per Diem	40.00	0.00
95	Transcript of recorded traffic hearing 2/17/08 (expedited.)	5.00	475.00
N/C	Copies of both above-mentioned transcript		
2	Binding	5.00	10.00
1	Retainer	-100.00	-100.00
SUBTOTAL			385.00
			0.00
			\$385.00
			TOTAL DUE

THANK YOU FOR YOUR BUSINESS!

Research for
Photo Speed Appeal Cases
Daniel Arthur Gutenkauf

MICHAEL K. JEANES
CLERK OF THE SUPERIOR COURT
MARICOPA COUNTY, ARIZONA
WWW.CLERKOF COURT.MARICOPA.GOV

Loc: 0075000

OP# 06053

Description	Qty	Amount
----- CASE# LC98-000778 -----		
COPIES	047	23.50
TOTAL AMOUNT		23.50
AMOUNT DUE		23.50
Cash		40.00
TOTAL PAID		40.00
CHANGE		16.50

Date 01/20/2009 Time 04:01 PM
Receipt# 00010586775
DANIEL

Keep This Receipt For Your Records

Legal Research for
Photo Speed Appeal Cases
Daniel Arthur Gutenkauf

MICHAEL K. JEANES
CLERK OF THE SUPERIOR COURT
MARICOPA COUNTY, ARIZONA
WWW.CLERKOF COURT.MARICOPA.GOV

Loc: 0075000

OP# 06053

Description	Qty	Amount
----- CASE# LC98-00604 -----		
COPIES	021	10.50
TOTAL AMOUNT		10.50
AMOUNT DUE		10.50
Cash		10.50
TOTAL PAID		10.50
CHANGE		0.00

Date 01/20/2009 Time 04:02 PM
Receipt# 00010586791
DANIEL

Keep This Receipt For Your Records

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000408-001 DT

10/06/2009

COMMISSIONER EARTHA K. WASHINGTON

CLERK OF THE COURT

T. Melius

Deputy

STATE OF ARIZONA

ROBERT S HUBBARD

v.

DANIEL ARTHUR GUTENKAUF (001)

DANIEL ARTHUR GUTENKAUF

1847 E APACHE BLVD #41

TEMPE AZ 85281

REMAND DESK-LCA-CCC

TEMPE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Appeal No. 08-157270-4

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The Court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

The appellant appeals the civil finding of responsibility in this case on several grounds. It is unnecessary to address each ground raised as the appeal can be decided by determining if the trial court abused its discretion when it denied the appellant's motion to dismiss on A.R.S. § 28-1561 grounds.

The appellant received a civil traffic ticket and complaint for allegedly violating A.R.S. § 28-701(A) on August 19, 2008. Officer Aaron Colombe of the Tempe Police Department issued the ticket and complaint on September 2, 2008. On the ticket the officer certified "upon reasonable grounds" he believed that the appellant committed the violation. A civil traffic hearing was held on February 17, 2009. Officer Colombe was not present to testify on behalf of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/06/2009

LC2009-000408-001 DT

the State instead an aide from the police department's traffic enforcement bureau testified. The aide told the trial court that the department follows a standard procedure before issuing traffic tickets and complaints for violations that are captured on the City's Traffic Enforcement System. The procedure followed entails receiving photos of violations from the City's service provider, Redflex, gathering registration information for the vehicle captured on the photos, and then determining if the person behind the wheel is the same sex as the registered owner of the vehicle; if those parameters are met in a case, the department will issue a ticket to the registered owner. No physical comparison is made between the owner of the vehicle's license photo and the photo of the person behind the wheel to determine if they match. In this case the aide admitted that the ticket issued by Officer Colombe did not contain any physical descriptors for the appellant; this fact showed that no comparison was done against any motor vehicle records of the appellant.

A.R.S. § 28-1561 states that traffic complaints need to contain a certification "by the issuing officer in substance as follows: 'I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law.'" The trial court in finding that the complaint was "properly issued" stated that Officer's Colombe's viewing the citation and doing "a match" was enough. "[T]he decision of whether to grant a defendant's motion for dismissal is within the sound discretion of the trial court. Absent an abuse of discretion, this Court will not disturb the denial of a motion to dismiss."¹ "A court abuses its discretion if it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or "the record fails to provide substantial evidence to support the trial court's finding." *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982)."² In this case the record fails to provide substantial evidence to support the trial court's finding that the officer properly issued the complaint. No reasonable grounds existed for Officer Colombe to issue the complaint to the 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. "Reason" is defined by Merriam's Webster's On-line Dictionary as : **b** : a rational ground or motive <a good reason to act soon> **c** : a sufficient ground of explanation or of logical defense; *especially* : something (as a principle or law) that supports a conclusion or explains a fact <the reasons behind her client's action>³; and "reasonable" is defined as being "in accordance with reason."⁴ Officer Colombe had no idea what the appellant looked like and issued the ticket based on the

¹ *State v. Hansen*, 156 Ariz. 291, 751 P.2d 951 (Ariz., 1988).

² *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, 156 P.3d 1149, 1155 (Ariz.App. Div. 2, 2007).

³ reason. (2009). In *Merriam-Webster Online Dictionary*. Retrieved October 6, 2009, from <http://www.merriam-webster.com/dictionary/reason>.

⁴ reasonable. (2009). In *Merriam-Webster Online Dictionary*. Retrieved October 6, 2009, from <http://www.merriam-webster.com/dictionary/reasonable>

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000408-001 DT

10/06/2009

fact that he is the registered owner of the vehicle and because the person captured in the photo was male. Different variables can exist for a male other than the appellant to be driving the vehicle at the time of the violation; this fact was proven when the appellant showed that both he and his twin brother are listed on the insurance as persons covered to drive the vehicle. Because the procedure adopted by the department did not provide reasonable grounds to issue the ticket to the appellant, the trial court should have granted the appellant's motion to dismiss the case.

IT IS THEREFORE ORDERED reversing the finding of responsibility and the sanction imposed.

IT IS FURTHER ORDERED remanding this matter to the Tempe City Court for all further proceedings consistent with this decision.

Exhibit F

STATE OF ARIZONA

CITY OF TEMPE

LOYALTY OATH

I, the undersigned, hereby execute this document in compliance Chapter 108 (House Bill 115) Laws 1961, First Regular Session.

Sec. 38-231, Arizona Revised Statutes:

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM: PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies, and independent offices.

B. For the purposes of this section, the term officer or employee means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions, or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing the oath or affirmation, or at any time thereafter during his term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions, or during such term of office or employment knowingly becomes or remains a member

(continued)

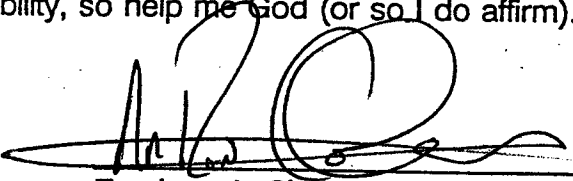
of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force or violence of the government of the state of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations had knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a class 4 felony and, upon conviction under this section, the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

F. Any of the persons referred to in Article XVIII, Section 10 of the Arizona Constitution as amended, related to the employment of aliens, shall be exempted from any compliance with the provisions of this section.

G. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of his office or employment, he shall take and subscribe the following oath of affirmation:

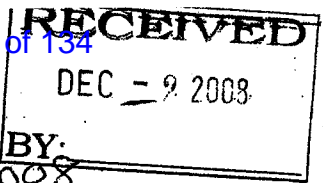
STATE OF ARIZONA,)
) ss
COUNTY OF MARICOPA)

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of my position according to the best of my ability, so help me God (or so I do affirm).



Employee's Signature

PUBLIC RECORDS REQUEST



City of Tempe

Dec. 2, 2008

This is a request for public records pursuant to A.R.S.39-121.

I wish to inspect and obtain a **CERTIFIED COPY** of the following public record:

Loyalty oath of office for
Tempe police officer Aaron Colombe ID No. 14847

"A record which is required by law to be kept or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said, or done is a public record."

Matthews v Pyle, 251 P.2d 893, 75 Ariz. 76

A.R.S. 38-231 et seq. requires that the loyalty oath of every public officer be taken, subscribed, and filed of record.

A.R.S. 39-121.01 D(1) provides that any person may request to examine or be furnished copies of any public record, and the custodian of such records *shall* furnish copies.

A.R.S. 39-121.02 C. provides that any person denied access to or the right to copy such records shall have a cause of action against the officer for damages.

A.R.S. 13-2407 A.(4) provides: A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly destroys, conceals, removes or otherwise *impairs the availability of any public record. (Emphasis added)*. Tampering with a public record is a class 6 felony

This request is NOT for a commercial purpose.

I agree to pay for reasonable copying costs (estimate requested)

Daniel Gutenkauf
Daniel Gutenkauf
c/o 1847 E. Apache Blvd.# 41
Tempe, Arizona 85281
Telephone (480) 966-7018

Exhibit G

TEMPE MUNICIPAL COURT
MARICOPA COUNTY, STATE OF ARIZONA

STATE OF ARIZONA,
 Plaintiff

vs

DANIEL ARTHUR GUTENKAUF,
 Defendant



CASE NO. **08-157270-4**

CONTINUED
NOTICE OF CIVIL TRAFFIC HEARING
AND SUBPOENA FOR OFFICER

YOU ARE HEREBY NOTIFIED TO APPEAR in the Civil Division of the Tempe Municipal Court, 140 E. 5th Street, Suite 150, Tempe, AZ 85281.

on February 17, 2009 at 10:00 AM

AS
AS
AS

I understand that this is a firm date and that I shall keep this date clear from any conflicts.

I acknowledge and waive the right to attend Defensive Driving Class.

I have been advised and understand that if I will be represented by an attorney at my hearing I must notify the Court and the City of Tempe Prosecutors Office in writing at least 10 CALENDAR DAYS prior to my hearing, or my right to counsel is considered waived. Notice to the Court and the City's Prosecutors Office is satisfied by a NOTICE OF APPEARANCE filed by your attorney within the prescribed time limit.

AS

I have been advised and understand that if I fail to appear for my hearing, the Court will enter a judgment for the State, impose a civil sanction and report that judgment to the Arizona Motor Vehicle Division. The Court will also order immediate suspension of my driving privileges.

AS

I understand that if I wish to have any witnesses subpoenaed I must notify the Court, in writing, not less than 2 weeks (14 days) prior to the hearing date and furnish the names, addresses and ZIP codes of said witnesses to the Court. **Circle 1: I will / will not be requesting witness subpoenas.**
 (FAX Number: (480)-350-2790)

NO

Do you need special accommodations? If yes, please indicate below.

☐ Hearing Impaired Device ☐ Interpreter ☐ Wheelchair Access ☐ Other

If Other, please specify _____

All rights reserved
Daniel Arthur Gutenkauf
 Defendant's Signature

RECEIVED A COPY OF THIS NOTICE ON January 22, 2009
 Date

1847 E APACHE BL # 41, TEMPE, AZ 85281

Phone No. (480)-966-7018

OFFICER SUBPOENA

Officer Name: COLOMBE, AARON ✓	Complaint No. TF100474	Violation Code 28-701A	Viol Date 08/19/2008	IR Report No. _____
Badge Number: 014847				
Officer Subpoena Issued: January 22, 2009				
Hearing Rescheduled from: January 22, 2009				

COURT USE ONLY

Attorney Name / Address: _____

Interpreter Scheduled: N/A Name / Phone No: _____ Language: _____

IR Ordered: X Due By: _____ Clk: IR Date Rcv'd: _____

D/L: **AZ-B10937741**

MVD Report Ordered: _____ No Record Found: _____ Clk: _____

Number of Subpoenas Issued: 2 Date Mailed: _____ Clk: _____

COURT

JRB 01/22/2009 15:20:49



CTH01

Exhibit H

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



February 13, 2009

Mr. Daniel Gutenkauf
1847 E. Apache Blvd, #41
Tempe, AZ 85281

Dear Mr. Gutenkauf:

The following is in response to your February 11, 2009 Public Records Request for a "certified copy of Loyalty Oath of office for Bianca Gallego."

I, Colleen Pacheco, certify that the attached Loyalty Oath for Traffic Enforcement Aide Bianca Gallego is a true and correct copy of the original on file with the City of Tempe Human Resources Department.

A handwritten signature in cursive script that reads 'Colleen Pacheco'.

Colleen Pacheco

Before me personally appeared M. Colleen Pacheco, custodian of records of the City of Tempe Human Resources Department, who signed the same for the purposes therein contained.

Subscribed and sworn to me before this 13th day of February, 2009.

Attachments (1)

A handwritten signature in cursive script that reads 'Connie Krosschell'.

NOTARY PUBLIC



STATE OF ARIZONA

CITY OF TEMPE

LOYALTY OATH

I, the undersigned, hereby execute this document in compliance Chapter 108 (House Bill 115) Laws 1961, First Regular Session.

Sec. 38-231, Arizona Revised Statutes:

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM: PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies, and independent offices.

B. For the purposes of this section, the term officer or employee means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions, or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing the oath or affirmation, or at any time thereafter during his term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions, or during such term of office or employment knowingly becomes or remains a member

(continued)

of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force or violence of the government of the state of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations had knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a class 4 felony and, upon conviction under this section, the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

F. Any of the persons referred to in Article XVIII, Section 10 of the Arizona Constitution as amended, related to the employment of aliens, shall be exempted from any compliance with the provisions of this section.

G. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of his office or employment, he shall take and subscribe the following oath of affirmation:

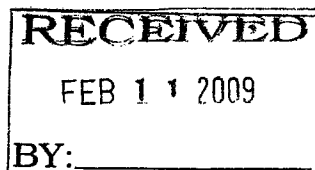
STATE OF ARIZONA,)
) ss
COUNTY OF MARICOPA)

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of my position according to the best of my ability, so help me God (or so I do affirm).



Employee's Signature

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



PUBLIC RECORDS REQUEST

Application for Public Records

Request is hereby made for the following public records (indicate document name, page numbers, address and permit number where applicable):

Certified Copy of Loyalty Oath of Office for Tempe Police Officer Bianca Gallego

Pursuant to A.R.S. §39-121.03, the applicant certifies that said documents: (check one)

☒ Will not be used for a commercial purpose.

☐ Will be used for the following commercial purpose (statement of commercial purpose pricing computation worksheet must also be attached):

A commercial purpose is defined by A.R.S. §39-121.03 as "the use of public record for the purpose of the sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale, or obtaining of names and addresses from such public records for the purpose of solicitation, or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record."

NOTICE: A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records. A.R.S. § 39-121.03(C).

Applicant's name (print) Daniel Gutenkopf

Applicant's signature Daniel Gutenkopf

Address 1847 E. Apache Blvd #41, Tempe, AZ 85281

Phone Number (480) 966-7018 Request Date: 2-11-09

PUBLIC RECORDS REQUEST

City of Tempe

February 11, 2009

This is a request for public records pursuant to A.R.S. 39-121.

I wish to inspect and obtain a **CERTIFIED COPY** of the following public record:

Certified Copy of Loyalty Oath of office for
Tempe Police Officer Bianca Gallego

"A record which is required by law to be kept or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said, or done is a public record."

Matthews v Pyle, 251 P.2d 893, 75 Ariz. 76

A.R.S. 38-231 et seq. requires that the loyalty oath of every public officer be taken, subscribed, and filed of record.

A.R.S. 39-121.01 D(1) provides that any person may request to examine or be furnished copies of any public record, and the custodian of such records *shall* furnish copies.

A.R.S. 39-121.02 C. provides that any person denied access to or the right to copy such records shall have a cause of action against the officer for damages.

A.R.S. 13-2407 A.(4) provides: A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly destroys, conceals, removes or otherwise *impairs the availability of any public record. (Emphasis added)*. Tampering with a public record is a class 6 felony

This request is NOT for a commercial purpose.

I agree to pay for reasonable copying costs (estimate requested)

Daniel Gutenkauf

Daniel Gutenkauf
c/o 1847 E. Apache Blvd. # 41
Tempe, Arizona 85281
Telephone (480) 966-7018

Exhibit I

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



June 30, 2010

Daniel Gutenkauf
1847 E Apache Blvd., #41
Tempe, AZ 85281

Dear Mr. Gutenkauf:

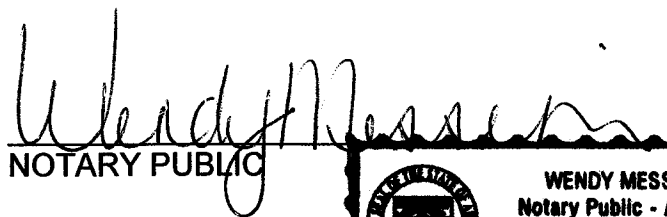
The following is in response to your June 25, 2010 Public Records Request for a "certified copy of loyalty oath of office for Thomas Ryff".

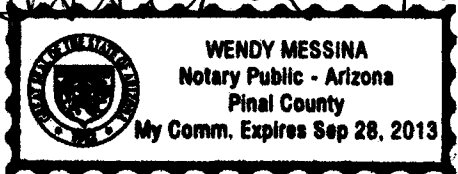
I, Eunice Brown, certify that the attached Loyalty Oath signed by Thomas Ryff is a true and correct copy of the original on file with the City of Tempe Human Resources Department.


Eunice Brown, HR Specialist

Before me personally appeared Eunice Brown, a Custodian of Records for the City of Tempe Human Resources Department, who signed the same for the purposes therein contained.

Subscribed and sworn to me before this June 30, 2010.


NOTARY PUBLIC

WENDY MESSINA
Notary Public - Arizona
Pinal County
My Comm. Expires Sep 28, 2013

6/30/10

Attachments (1)

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



June 30, 2010

Daniel Gutenkauf
1847 E. Apache Blvd., #41
Tempe, AZ 85281

Dear Mr. Gutenkauf:

The following is in response to your June 25, 2010 Public Records Request.

Date of employment for Thomas Ryff: 08/27/1979 - present
Salary for Thomas Ryff (annual base rate): \$165,000.16.

If you have questions, I can be reached at 480-858-2147.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Eunice Brown'.

Eunice Brown
HR Specialist

STATE OF ARIZONA

OFFICE OF CITY OF TEMPE**Loyalty Oath**Name THOMAS J. RYFFCapacity POLICE OFFICER

(Elected Officer, Employee, etc.)

I, the undersigned, hereby execute this document in compliance with Chapter 108, Laws of the State of Arizona, Twenty-fifth Legislature, First Regular Session, properly cited as the Arizona Communist Control Act of 1961.

13-707. DEFINITION OF SEDITION; PARTIES; PUNISHMENT

A. A person who knowingly or wilfully commits, or aids in the commission of any act to overthrow by force or violence the government of this state, or of any of its political subdivisions, is guilty of sedition against the State of Arizona.

B. A person who knowingly or wilfully advocates the overthrow by force or violence the government of this state, or of any of its political subdivisions, is guilty of sedition against the State of Arizona.

C. A person who knowingly or wilfully becomes or remains a member of the Communist Party of the United States, or its successors, or any of its subordinate organizations, or any other organization having for one of its purposes the overthrow by force or violence of the government of the State of Arizona, or any of its political subdivisions, and said person had knowledge of said unlawful purpose of said Communist Party of the United States or of said subordinate or other organization, is guilty of sedition against the state.

D. Any person who violates any provisions of this article is guilty of a felony, and upon conviction there-of shall be punished by a fine of not more than twenty thousand dollars, or imprisonment in the state prison for not more than twenty years, or both.

13-707.01. DISQUALIFICATION TO HOLD OFFICE

Any person who is convicted of violating any provision of this article shall automatically be disqualified and barred from holding any office, elective or appointive, or any position of trust, profit or employment with this state, or any political subdivision of this state, or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM; PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. For the purposes of this section, the term officer or employee means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

(OVER)

E10

E. Any of the persons referred to in Article XVIII, Section 10 of the Arizona Constitution as amended, related to the employment of aliens, shall be exempted from any compliance with the provisions of this section.

F. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of his office or employment, he shall take and subscribe the following oath or affirmation:

State of Arizona, County of Maricopa I, Thomas J. Ryff
(Type or print name)

do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of

Police Officer (name of office) Police Department according to the best of my ability, so help me God (or so I do affirm).

Thomas J. Ryff
(Signature of officer or employee)

The foregoing oath has been subscribed to before me this 27th day of August, 1979.

Veta F. Moore ne Taylor
(Signature)

NOTARY my Commission Expires Sept. 26, 1980
(Office)

Filed of record by me this _____ day of _____, 19____

(Signature)

(Office)

Exhibit J

PUBLIC RECORDS REQUEST

Application for Public Records

Request is hereby made for the following public records (indicate document name, page numbers, address and permit number where applicable):

- ① Loyalty oath of office for City of Tempe Judge Barcetti (certified copy)
② Documents showing date of hire and salary for Judge Barcetti

Pursuant to A.R.S. §39-121.03, the applicant certifies that said documents: (check one)



Will not be used for a commercial purpose.

☐ Will be used for the following commercial purpose (statement of commercial purpose pricing computation worksheet must also be attached):

A commercial purpose is defined by A.R.S. §39-121.03 as "the use of public record for the purpose of the sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale, or obtaining of names and addresses from such public records for the purpose of solicitation, or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record."

NOTICE: A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records. A.R.S. § 39-121.03(C).

Applicant's name (print)

Daniel Gutenkauf

Applicant's signature

Daniel Gutenkauf

Address

1847 E. Apache Blvd #41, Tempe, AZ 85281

Phone Number 480 966-7018 Request Date:

3/2/09

will pick up - call when ready

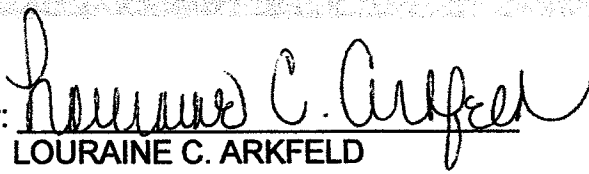



PRO TEM AGREEMENT 2008-2009

Pursuant to Section 2-28, Tempe City Code, the Presiding Judge of the Tempe Municipal Court is authorized to appoint such judges pro-tempore as are required by the Court. The Court having found that Mary Jo Barsetti meets all requirements set forth in Section 2-26, Tempe City Code, has appointed Mary Jo Barsetti as a pro-tempore judge. Appointment is accepted under the following terms and conditions.

- 1) That as a pro tempore judge, he/she will serve on an as needed basis with no guarantee as to the number of hours that will be scheduled;
- 2) That as a pro-tempore judge, he/she shall be compensated on an hourly basis. The rate of pay shall be \$50.00 per hour payable for each hour actually worked as a judge in the Criminal Division. If serving as a pro-tempore hearing officer in the Civil Division, the rate of pay shall be \$50.00 per hour payable for each hour actually worked;
- 3) That as a pro tempore judge he/she serves as a contractual employee and does not qualify as a regular employee of the City of Tempe and is thus not eligible for any benefits as a regular City of Tempe employee;
- 4) That the City of Tempe will not pay withholding and social security tax because they are independent contractors;
- 5) That this agreement shall constitute the full agreement between the Tempe Municipal Court and Mary Jo Barsetti.

DATED this 19th day of June, 2008

By: 
LOURAINE C. ARKFELD
Presiding Judge
Tempe Municipal Court

By: 
Mary Jo Barsetti
Judge Pro-Tem
Tempe Municipal Court

LOYALTY OATH OF OFFICE

MUNICIPAL COURT OF THE CITY OF TEMPE

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss.

I, Mary Jo Baeretti

Do solemnly swear (or affirm) that I will support the Constitution of the United States
and the Constitution and Laws of the State of Arizona; that I will bear true faith and
allegiance to the same, and defend them against all enemies, foreign or domestic, and that
I will faithfully and impartially discharge the duties of the office of Judge
Pro-Tem

According to the best of my ability, So Help Me God (or so I do affirm).

[Signature]
Signature of Officer/Employee

Subscribed and sworn to before me this 27th day of June, 2008

Jacquelin S. Frusetta
Notary Public

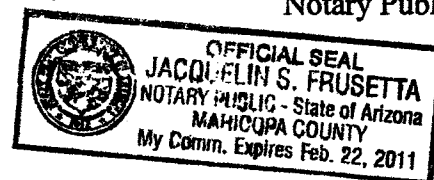


Exhibit K

Procedural Manual for the Department of Public Safety, AZ
NEW CHANGES EFFECTIVE IMMEDIATELY 04-21-09

Response Times and Deadlines

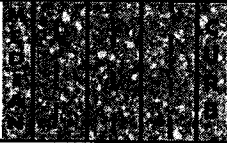
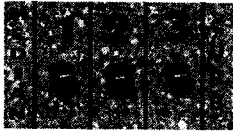
Process:	Time frame:
Send to police authorization	Within 5 days of violation date
Police authorization	Will occur within 3 days of receipt
Mail out violation	On or before the 10th calendar day from date of violation
Returned Nomination	Must be within ____ days
Process Nomination	Must be mailed within ____ days from date received
Readdressing	full readdress: transunion & enter in smartops, no fwd address: dismiss in smartops
Retain issued citation data	For no less than 12 months
Legal or contractual obligation	legal obligation :: may not issue notices after timeframe ::

V1 - Special Notes for DPS















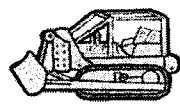

1. If you cannot obtain face image, revert to B scene within the face image.
2. If you cannot obtain plate image, revert to A scene within the plate image.
3. The Reset button must be used prior to making any changes to a plate read (including changing the state) or for restarting an incident after it has been reset during QA.
4. Send all vehicles registered to a government entity. These usually have a "G" plate if it is an AZ plate. <u>Do not reject for any reason</u> (including missing video) – we must send all government vehicles regardless of the image quality. If we cannot get the entire plate – send through with 6X's in the plate field to NOF, 123 Any St, DPS, AZ 00000. Please ask your supervisor or Team Lead if you have any questions.
5. Please make sure video is working and clear. If not, report issue to supervisor/lead, and reject for Miscellaneous Camera Issue.
6. <u>Reporting a Camera Issue</u> : Before you report a camera issue to the lead, please make sure to have 3 incident numbers for the same location with the same issue.
7. <u>Accidents</u> : Log the accident in the "Accident Log" and process as normal. If you can't get a face and/or plate read, send it through as NOF, 123 Any St, DPS, AZ 00000 with 6 X's in plate field. Please don't forget to check corporate/incomplete.
<u>Do Not Reject accidents!</u>
8. <u>Do Not</u> reject any incidents for face issues if we can capture the plate image, send to batch. If you can capture plate image and not the face image, <u>do not reject</u> – send to batch. If you cannot capture plate, follow normal processing guidelines
9. <u>FACE IMAGES</u> : AZDPS requires 50% of face visible. Otherwise, if the face is obstructed by any other means, or if the driver would not be recognizable in person, reject the incident for the appropriate reject reason.
10. DPS would like to review incidents where the driver is blatantly obstructing his/her face (with a hand, magazine, clothing, etc).







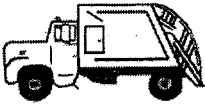

*****See Special Notes below when processing Speed Van incidents (located after the V2 Lookup Information)*****

Lane Numbering (only pertains to Fixed Speed)

Situation	Example	City Requirements	Example
Lane layout		<p>From median to curb (1,2,3)</p> <p><i>*Note: If there is an HOV lane it will be designated as Lane 0.</i></p>	

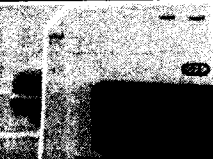









V1- Vehicle Types and Required Response

Situation	Example	Issue citation?	Information
Car			
Truck			
Emergency vehicle in code 3 (lights on)			<p>If info comes back- process. If not, mark as corporate/ incomplete and send to: NOF 123 ANY ST DPS, AZ 00000 *Do Not Reject*</p>
Emergency vehicle not in code 3 (lights off)			<p>If info comes back- process. If not, mark as corporate/ incomplete and send to: NOF 123 ANY ST DPS, AZ 00000 *Do Not Reject*</p>
Trailer plate			<p>Check front for plate read. If no plate: <u>Reject Reason: Plate Obstruction</u></p>
School bus			
Motorcycle without helmet			<p>For motorcycle WITH helmet, see <u>V1- Situation Criteria and Required Response.</u></p>
Tractor (and other farm equipment)			<p>If plate is clear, then process. If not, <u>Reject Reason: Paper Plates</u></p>















Semi-truck or extended vehicle		→		If you can get the FRONT plate only, then process. If not: <u>Reject Reason: Extended Vehicle</u>
Bus (city registered)		→		If plate brings back information, then process. If not: <u>Reject Reason: Wrong or No DMV</u>
Tractor trailer		→		If you can get the FRONT plate, or the rear plate on the TRACTOR, then process. If not: <u>Reject Reason: Paper Plates</u>
Garbage/ dump trucks		→		If plate brings back information, then process. If not send as: NOF 123 Any St DPS, AZ 00000

V1- Situation Criteria and Required Response





Obstruction





Situation	Example	Issue citation?	Information
Plate is partially or totally blocked		→ 	If you cannot obtain plate image, revert to A scene within the plate image, if not use appropriate reject reason: <u>Reject Reason: Plate Obstruction</u>
Vehicle is blocked and the stop bar is not visible		→ 	If the intersection has video, then process. If the intersection does not have video: <u>Reject Reason: Vehicle Obstruction</u>
Traffic signals are blocked		→ 	<u>Reject Reason Signal Obstruction</u>
Face is partially obstructed (visor, sunglasses, hats) or driver is ducking		→ 	*SEE SPECIAL NOTES #7* If more than 50% of the face is visible, then process. If not: <u>Reject Reason: Driver Obstruction/Duckers</u>
Motorcycle with helmet		→ 	*SEE SPECIAL NOTES #6* DPS requires 50% of face visible. If not, reject for motorcycle helmet

Registration

Situation	Example		Issue citation?	Information
No plate on car		→		Check for front plate. If no front plate, then <u>Reject</u> <u>Reason: Paper Plates</u>
Out of state plate		→		
Out of country plate		→		<u>Reject Reason: Out of Country Plate</u>
Can not identify state of plate		→		Add a comment, and place on hold in Ops Request. Inform lead and supervisor.
Dealer plates on vehicle		→		If the plate is crystal clear, then process. If not: <u>Reject</u> <u>Reason: Wrong or No DMV</u>
Paper plates on vehicle		→		If the plate brings back the correct information, then process. If not: <u>Reject</u> <u>Reason: Paper Plates</u>
Vehicle has a handicapped/disabled plate		→		Enter WC prior to the letters/numbers that appear on the plate. (Ex: WCAAA31) If no record is found, manually look up the plate read without adding the prefix WC. If still no record is found, notify a lead or supervisor. If the plate is personalized, enter it exactly how it appears with no prefix.

Policy/Weather

Situation	Example		Issue citation?	Information
Heavy fog, rain, snow, e.t.c.		→		If the violation and plate are clear, then process. If not: <u>Reject Reason: Weather/Nature</u>
Sun glare on windscreen- can't see driver's face		→		<u>Reject Reason: Sun Glare</u> <u>**Hint:</u> If windshield is blacked out in the daytime, that is usually considered sunglare.

Accident		→		SEE SPECIAL NOTES #5
Funerals, parades, and police directed intersections		→		<u>Reject Reason: Road Restrictions</u>

Face Issues

























Situation	Example		Issue citation?	Information
Face is too blurry to see		→		If you cannot obtain face image, revert to B scene within the face image. If not: <u>Reject Reason: Face Camera Focus Blurry</u>
Face flash is not strong enough or too strong		→		If you cannot obtain face image, revert to B scene within the face image. If not: <u>Reject Reason: Face Camera Flash Inappropriate</u>
No flash in face shot		→		If you cannot obtain face image, revert to B scene within the face image. If not: <u>Reject Reason: Face Camera No Flash</u>
Face is not in face shot		→		If you cannot obtain face image, revert to B scene within the face image. If not: <u>Reject Reason: Face Not in Frame</u>
Passengers		→	Mask all identifiable features of passenger-- not just the face.	

Plate Issues









Situation	Example		Issue citation?	Information
Plate is too blurry to see		→		If you cannot obtain plate image, revert to A scene within the plate image. If not: <u>Reject Reason: Rear Plate Camera Blurry</u>
Plate flash is not strong enough or too strong		→		If you cannot obtain plate image, revert to A scene within the plate image. If not: <u>Reject Reason: Rear Plate Flash Inappropriate</u>









No flash in plate shot		→		If you cannot obtain plate image, revert to A scene within the plate image. If not: <u>Reject Reason: Rear Plate No Flash</u>
Plate is not in plate shot		→		If you cannot obtain plate image, revert to A scene within the plate image. If not: <u>Reject Reason: Plate Not in Frame</u>

Scene Image Issues





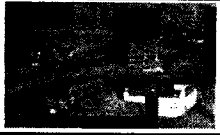





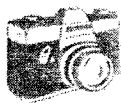

Situation	Example		Issue citation?	Information
Scene image is too blurry to see		→		<u>Do Not Reject or Enhance</u>
Scene image flash is not strong enough or too strong		→		<u>Do Not Reject or Enhance</u>
No flash in one or both scene images		→		<u>Do Not Reject or Enhance</u>

No Offense Issues

Situation	Example		Issue citation?	Information
No offense is being committed (doesn't fit into other categories)		→		<u>Reject Reason: No offense - Other</u>
Camera triggers when no cars are moving or no cars are present		→		<u>Reject Reason: No offense- False Trigger</u>
Vehicle slams on brakes and stops		→		<u>Reject Reason: No offense- Screeching Stop</u>
Yellow with Red		→		<u>Reject Reason: Yellow with Red Light</u>

Car is turning right on red		→		DPS does not prosecute right turn violations. Reject Reason: No offense- Turn Trigger
Vehicle is after stop bar when the light turns red		→		Reject Reason: No Offense- After Stop Bar
Vehicle decides to go straight when in a left turn lane	  	→		If the vehicle also runs the main light, then process. If not <u>Reject Reason: No Offense- Straight on Left</u>



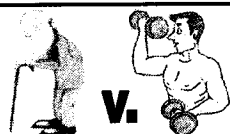

Other Issues













Situation	Example		Issue citation?	Information
Plate looks white with no numbers		→		* SEE SPECIAL V-1 SPECIAL NOTES BEFORE REJECTING* If not: <u>Reject Reason: Plate Burn Out/Sunglare</u> (depending on time of day)
One or more images are missing		→		* SEE SPECIAL V-1 SPECIAL NOTES BEFORE REJECTING* If not: <u>Reject Reason: Image Missing</u>
One or more images are distorted		→		* SEE SPECIAL V-1 SPECIAL NOTES BEFORE REJECTING* If not: <u>Reject Reason: Digital Distortion</u>
Databar information is incorrect or unreadable		→		<u>Reject Reason: Databar Unreadable/Incorrect</u>
Incident is missing video		→		DPS requires working video. <u>Reject Reason: Misc Camera Issue</u> Report issue to lead/trainer
Other camera issues	 = ?	→		* SEE SPECIAL V-1 SPECIAL NOTES BEFORE REJECTING* If not: <u>Reject Reason: Misc Camera Issues</u>

V2 - Special Notes for DPS

1. Please add a comment for the following reasons: a) gender mismatch; b) age mismatch; c) vehicle mismatch; d) no vehicle information; e) criminal speed; f) accidents; g) DL details are missing; h) no DMV info.
2. If a vehicle comes back registered to Alamo (this includes Alamo Financing), regardless of state plate, please use the following address: Alamo, Po Box 22233, Tulsa, OK 74121.
3. All vehicles registered to <u>Wal-Mart in Pauls Valley, OK</u> should be sent to: <u>Private Fleet Safety Department, 311 N Walton, Mail Stop 650, Bentonville, AR 72716-0650.</u>
4. Mark an incident corporate/incomplete if it is a true business, age and/or gender mismatch, vehicle mismatch, or criminal speed.
5. AZ DMV may bring back different vehicle types than other cities (ex. all SUVs are listed as station wagons in AZ); please check the NLETS manual for a breakdown of AZ DMV vehicle types.
6. If you have a gender mismatch, check the white box in the More screen to see if there is another Registered Owner info that matches the gender. If there is RO info that matches the drivers gender, add that info. If not, mark corporate/incomplete and leave any and all DL and DOB details.
7. If a plate read comes back with person/company information but no vehicle details, please leave the RO details, mark the incident corporate and send through to the PD. Add a comment, "No vehicle information".
8. If DMV information comes back for a plate stating Credit Use Only, Do Not enter the vehicle information (the plate is in transition). Mark the incident corp/incomplete and leave all or any R/O details. As usual add a comment "credit use only".
9. Information that comes back as "Owner Notice of Sale": Look up manually through NLETS. If buyer is listed with complete name and address, input manually in the correct fields. If no buyer is listed, input the previous owner info manually in correct fields. If buyer is listed but not with a complete address, input the previous owner info manually in the correct fields. You will then process the incident normally: Input vehicle information. Check for criminal speed, gender mm, age mm etc. and process as normal per manual.
10. If a vehicle is registered to a rental agency, you must check that it has the correct address. If it does not, replace the address in SmartOps with the correct address. (See "Rental Agency Addresses" Tab). Only applies to AZ plates.
11. Please delete all special characters in the V2 Stage <u>except</u> '&'. Delete periods (ex. P.O. Box), Dashes, Slashes, Commas, Hyphens (between last names - ex. Doe-Smith), and % (ex. %SR).

V2 and Manual Lookup Information

Situation	Example	Issue citation?	Information
Gender mismatch of driver (DMV record v. Redflex picture)			Leave <u>any and all</u> DL and DOB details. Mark the incident corporate. Add a comment and process normally ***SEE V2 SPECIAL NOTES (numbers 1 and 6)***
Age mismatch of driver (DMV record v. Redflex picture)			***SEE V2 SPECIAL NOTES (numbers 1 and 4)*** Retain all DL details (i.e. DL number, DOB, etc).

Vehicle make/model mismatch (DMV record v. Redflex picture)	 V. 	→		If the plate is crystal clear, mark as corporate and send with license information. Add comment "Clear Plate Read/Vehicle Mismatch/Nlets checked". If plate is not crystal clear, reject for appropriate reason (i.e. plate obstruction, blurry plate, etc)
No DMV Information	 DMV Info	→		*Delete all Vehicle and license details.* Mark Corporate/Incomplete and send as: NOF 123 Any St DPS, AZ 00000 Leave comment--No DMV Info
Vehicle owner comes back as a business		→		Check white box for RO info. If not given, delete DL information and mark as corporate/incomplete.
Registered owner's address is protected under law (street address doesn't come back from the DMV)	 DPS PD	→		Mark Corporate/Incomplete and send as: NOF 123 Any St DPS, AZ 00000
Both a physical address AND a PO Box address was returned for the registered owner	John Doe 123 Any St. / PO Box 12345	→		Always enter the PO Box address in DPS.
No Drivers License Number No Date of Birth No DL Details (In State Plates)	D.O.B.: 07/07/1977 DL#: D0017504 Eyes: Blue Hair: Brown Height: 6'01" Weight: 175	→		<u>Both DL and DOB info are required.</u> If this information is not provided, mark as corporate/incomplete. Add a comment--No DL Info Given. If any other DL details <u>are not</u> given do not mark corp do not leave comment.
No Drivers License Number No Date of Birth No DL Details (Out of State Plates)	D.O.B.: 07/07/1977 DL#: D0017504 Eyes: Blue Hair: Brown Height: 6'01" Weight: 175	→		Any information provided from the DMV <u>must</u> be entered. If this information is not provided, <u>do not</u> mark as corporate/incomplete.

Speed Van Special Notes

1. In Highway incidents, if a vehicle is in the 4th lane or further from the camera, and the face and/or plate is blurry (unreadable, unrecognizable, not in frame), please reject for No Offense -- Other, not for camera issues. The counting of the lanes must be actual lanes, and not the shoulder. Also the counting of the lane starts with the lane closest to the speed van. If unsure, ask a lead/trainer.
2. If, in the face shot, there are two vehicles in the beam, but the video clearly shows which is the offending vehicle, process as normal.

Exhibit L

Procedural Manual for Tempe, AZ

Response Times and Deadlines

Process:	Time frame:
Send to police authorization	Within 7 days of violation date
Police authorization	Will occur within 5 days of receipt
Mail out violation	On or before the 6th day of receipt of authorization
Returned Nomination	Must be within 6 days
Process Nomination	Must be mailed within 60 days from date received
Readdressing	No readdressing; no fwd address; dismiss in smartops, email to TPD
Retain issued citation data	For ___ years
Legal or contractual obligation	legal obligation :: may not issue notices after timeframe :: will go too old after 60 calendar days from date of violation

V1 - Special Notes for Tempe

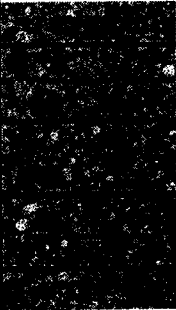


1. The Reset button must be used prior to making any changes to a plate read (including changing the state) or for restarting an incident after it has been reset during QA.







2. Video is not required to issue citations for anything other than Red Light right/left turn violations.

3. If a vehicle is turning left with the main light (the light the left turn lane is using) and the turn arrow being red at the same time, reject these for No Offence Other.

4. At the intersection of N/B Rural and Warner Roads (TEM-RUWA-01), there is no red left hand turn signal. Please reject left turn violations at this intersection when the light turns green. <u>Reject for No Offense Other.</u>
5. At the intersection of N/B University and Rural (TEM-RUUN-01), the lane closest to the curb is not monitored.
6. At the intersection of 48th St and Broadway Rd (TEM-BR48-01), the far right lane is <i>not</i> monitored.
7. At the intersection of TEM-MISO-01 (S/B Mill Ave and Southern Ave), the right turn lane is not monitored.
8. <u>FIXED SPEED:</u> Please make sure to check if the number in the "Axle" field matches the vehicle in question, and always check the video to make sure the speed being displayed in the Data Bar field seems correct. If there is a question about either one or both, place on hold in Ops Request, and inform a supervisor.
9. Always make sure you watch the video (if available). Make certain there are no issues (e.g. running short, missing footage); if there are, report them to Team Lead immediately.
10. The violation line in Tempe is the prolongation of the curb -- last line up.

Lane Numbering

Situation	Example	City Requirements	Example
Lane layout		 From curb to median (3,2,1)	

Incident is missing video				Tempe uses video <i>only</i> for Red Light turn violations (left and right turns). Video is not required for any other incidents.
Other camera issues				Reject Reason: <u>Misc Camera Issues</u>




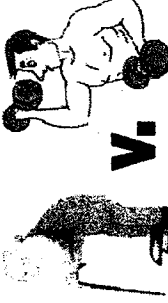


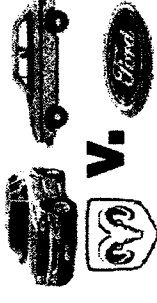


V2 - Special Notes for Tempe














1. If DMV information comes back for a plate with a person/company's information but no vehicle information, you may still send the incident through if the plate is CRYSTAL CLEAR.
2. Only mark an incident corporate if it is a true business, or if there is an age and/or gender mismatch.
3. Please delete all special characters in the V2 Stage <u>except</u> '&'. Delete periods (ex. P.O. Box), Dashes, Slashes, Commas, Hyphens (between last names - ex. Doe-Smith), and % (ex. %SR).
4. If a vehicle comes back registered to Alamo (regardless of state plate), please use the following address: <u>Alamo, Po Box 22233, Tulsa, OK 74121.</u>
5. NLETS does not return DOB information, only DL number. Retain DL number, change state to AZ, and process. Do not mark corporate/incomplete.

6. AZ DMV may bring back different vehicle types than other cities (ex. all SUVs are listed as station wagons in AZ); please check the NLETS manual for a breakdown of AZ DMV vehicle types.

7. All vehicles registered to Wal-Mart in Pauls Valley, OK should be sent to: Private Fleet Safety Department, 311 N Walton, Mail Stop 650, Bentonville, AR 72716-0650.

V2 and Manual Lookup Information

Situation	Example	Issue citation?	Information
Gender mismatch of driver (DMV record v. Redflex picture)	 V.	 	Do NOT add any DL information. Mark as corporate/incomplete.
Age mismatch of driver (DMV record v. Redflex picture)	 V.	 	Add DL Information, then mark as corporate/incomplete.
Vehicle make/model mismatch (DMV record v. Redflex picture)	 V.	 	If the plate is crystal clear, mark as corporate and send with no license information. If not, reject accordingly.

No DMV Information				Reject Reason: Wrong or No DMV
DMV Info				
Vehicle owner comes back as a business				Delete DL information and mark as corporate/incomplete.
Registered owner's address is protected under law (street address doesn't come back from the DMV)	 Tempe PD			Reject Reason: Wrong or No DMV
Both a physical address AND a PO Box address was returned for the registered owner	John Doe 123 Any St. / PO Box 12345			Always enter the PO Box address in Tempe.
No drivers license number and date of birth	D.O.B: 07/07/1977 DL#: D0017504			NLETS does not return DOB information, only DL number. Retain the DL number, change state to AZ, and process. Do not mark corporate/incomplete

No license details	<p>Eyes: Blue Hair: Brown Height: 6'01" Weight: 180 lbs</p> <p>↑</p> <p>YES</p> <p>NLETS does not return this information. Process normally, do not mark corporate/incomplete</p>
--------------------	--

Speedvan Information

Situation	Issue citation?	Information
Two vehicles in beam (FACE SHOT)	<p>↑</p> <p>NO</p>	<p><u>Reject Reason: Two vehicles in beam</u></p>
Two vehicles in beam (PLATE SHOT)	<p>↑</p> <p>YES</p>	<p>As long as there is only one vehicle in the face shot, an incident can be processed with two vehicles in the plate shot.</p>
One or more images are distorted and speed is at 62mph or 126mph	<p>↑</p> <p>NO</p>	<p><u>Reject Reason: Next Vehicle/Test Shot</u></p>
Vehicle is not in one (or both) of the frames	<p>↑</p> <p>NO</p>	<p><u>Reject Reason: Vehicle Not in Frame</u></p>

Exhibit M

**"PERSONAL SERVICE"**

PLEASE DISREGARD IF THIS COMPLAINT HAS ALREADY BEEN SATISFIED

Tempe Municipal Court, Maricopa County (0753)**Arizona Traffic Ticket and Complaint**

Complaint # TF100474		Case #	Military	<input type="checkbox"/> Accident <input type="checkbox"/> Fatality		<input type="checkbox"/> Serious Physical Injury		<input type="checkbox"/> Commercial <input type="checkbox"/> Haz Material		DR #	GRID #
Driver's License Number B10937741		State AZ	Class	Endorsements M H N P T X D				Agency Use			
DEFENDANT		First Middle Last DANIEL ARTHUR GUTENKAUF									
Residential Address/Mailing 1847 E APACHE BL # 41			City TEMPE			State AZ		Zip 85281	Telephone		
Sex	Weight	Height	Eyes	Hair	Origin	Date of Birth		Restrictions			
Business Address 1847 E APACHE BL # 41			City TEMPE			State AZ		Zip 85281	Telephone		
VEHICLE		Color	Year 1989	Make CHEV	Model	Style SW	License Plate 386WCD	State AZ	Expiration 07/31/2009		
Registered Owner DANIEL ARTHUR GUTENKAUF			Address 1847 E APACHE BL # 41, TEMPE, AZ 85281								
			Vehicle Identification Number								

ON	Month AUGUST	Day 19	Year 2008	Time 12:10 pm	AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>	SPEED	Approx. 47	Posted 35	R&P	Beat	Speed Measurement Device	
AT	Location 200 S RURAL RD NB											

A.	Section	ARS/CC ARS 28-701A	Violation Description SPEED GREATER THAN REASONABLE AND PRUDENT		Civil Traffic
	Docket Number	Disposition Codes	Date of Disposition		Sanction

I certify upon reasonable grounds, I believe the person named herein committed the act(s) described and I have caused this complaint to be issued on: **09/02/2008**

14847

AARON COLOMBE, Complainant

ID No.

SUMMONS

You are hereby summoned and ordered to appear at the Tempe Municipal Court - 140 East 5th Street, Tempe, Arizona **NO LATER THAN: 11/17/2008 between 8:00 AM to 4:00 PM** on a complaint charging you with the offense of: **SPEED GREATER THAN REASONABLE AND PRUDENT on 08/19/2008**.

Louanne C. Arkfeld, Presiding Judge

If the sanction/fee and costs of \$ 197.00 are received by the Court prior to the above date, you do not need to appear in court.

WARNING TO DEFENDANT

If you waive service or you are served with the Summons and Complaint and you fail to appear as directed, a default judgment may be entered against you, a civil sanction imposed, and your driver's license suspended. Your driver's license or non-resident privileges may remain suspended until the sanction is paid in full and you satisfy Motor Vehicle Division requirements (A.R.S. 28-1557).

WAIVER NOTICE: Rules 4.1 and 4.2, Arizona Rules of Civil Procedure, require defendants living within the United States to cooperate in saving unnecessary costs of service of summons. To avoid further action and additional costs including default fees, a \$20.00 time payment fee, and a minimum \$26.00 cost if personal service is required, respond no later than 11/17/2008 by choosing one of the options on the Options Page (page 2). You must sign the reverse side of the coupon to avoid these costs. By law, you have been provided with a copy of the complaint and an enclosed envelope with which to comply.

- This is a copy of the complaint with the offense described on the enclosed complaint that has been filed in the Tempe Municipal Court.
- The offense for which you have been cited is a civil traffic violation.
- Notice is hereby given that if you fail to appear as directed in this complaint on a civil traffic violation, a default judgment may be entered against you, a civil sanction may be imposed, and your license may be suspended. Your driver's license or non-resident operating privileges may remain suspended until the civil sanction is paid and you satisfy Motor Vehicle Division requirements (A.R.S. 28-1557). Please be advised that persons carrying weapons of any kind will not be permitted in the court building.

VIOLATOR/DEFENDANT COPY - Keep for your records

YOUR OPTIONS TO SATISFY YOUR APPEARANCE REQUIREMENT ARE:

PLEASE CHOOSE ONLY ONE

OPTION "A" PAY THE SANCTION

To pay the sanction by mail, complete section A on Page 2 and return it with proper payment in the enclosed envelope. Credit card payments may also be made in person or by calling within Maricopa County at (480) 350-8800 or outside of Maricopa County 1-877-729-2687. Please have your complaint/citation number available when paying. Payment may also be made at two available drop boxes. One is located directly in front of the court building, at 140 E. 5th St. and the other is on the south side of the parking lot west of City Hall, at 31 E. 5th St. Payments by check or money order are accepted. Make check or money order payable to the "Tempe Municipal Court". Payments made to drop boxes after 9:00 a.m. will be processed the next business day. For additional payment information go to: <http://www.tempe.gov/court/fines.htm>

OPTION "B" IDENTIFY THE DRIVER

IF YOU WERE NOT THE DRIVER OF THIS VEHICLE at the time of the violation, complete section B on page 2 and return it in the enclosed envelope before your appearance date. **YOU MUST INCLUDE AN ENLARGED CLEAR COPY OF YOUR DRIVER'S LICENSE TO REQUEST TO EXCLUDE YOURSELF AS THE DRIVER OR NOMINATE ANOTHER DRIVER.** If your nomination is declined, you will receive notification from the Court.

OPTION "C" REQUEST A TRIAL/HEARING (Do not request a hearing if you were not the driver – see option B)

To contest this citation, complete section C on Page 2 and return it in the enclosed envelope no later than five (5) working days before the assigned appearance date. You will be notified by mail of your hearing date. You only need to appear on the newly-assigned hearing date. If you are under 18, a parent or guardian must accompany you to the arraignment or hearing, unless waived in writing by the parent/legal guardian.

OPTION "D" ATTEND DEFENSIVE DRIVING PROGRAM

(If selecting this option, you do not pay the court fine, you only pay the fee to the school. Once you have scheduled a class, complete and return section D on Page 2. Do Not Call the Court.)

If you attend the class, points will not be assessed to your Motor Vehicle record. You may attend any of the defensive driving schools in the state of Arizona. The following schools offer classes:

AZ 'Crash Course' in Traffic Safety

East Valley (480) 857-4740 Phoenix Metro (602) 277-0102 West Valley (623) 486-0037
Outside Maricopa County 1-800-515-9599
www.azccts.com

Arizona Defensive Driving School

Inside Maricopa County (602) 569-2332
Outside Maricopa County 1-800-279-2477
www.azdds.com

The TEMPE MUNICIPAL Court **DOES NOT** accept online\Internet classes. You are eligible to attend the Defensive Driving Program if: you have not previously attended within the last two years, violation date to violation date; you have a valid driver's license or picture ID; your violation did not result in an accident involving death or a life threatening injury, and your violation has not already been set for hearing or trial; you do NOT have a commercial driver's license. If you were personally served, you must pay the \$26 service fee to the Tempe Municipal Court before you will be allowed to attend class. Bring your driver's license or picture ID, Arizona Traffic Ticket and Complaint, and payment in the form required by the school with you on the date of the class. You must bring a copy of the Arizona Traffic Ticket and Complaint to class. If you have lost it, you must return to court and obtain a new copy before the day of the class. **IF YOU COMPLETE THE CLASS BEFORE YOUR COURT DATE, YOU DO NOT HAVE TO APPEAR IN COURT.**

INSTRUCCIONES: INFORMACIÓN IMPORTANTE PARA EL ACUSADO

POR FAVOR ESCOJA SOLAMENTE UNA OPCIÓN PARA CUMPLIR CON EL REQUISITO DE COMPARECER:

OPCIÓN "A" PAGAR LA MULTA

Para pagar su multa por correo, por favor llene toda la información en la sección "A" que se encuentra en pagina 2 y devuélvela con su pago en el sobre provisto. Los pagos con tarjeta de crédito también se pueden hacer en persona o por teléfono dentro de Maricopa County al (480) 350-8800 o fuera de Maricopa County al 1-877-729-2687. Favor de tener a mano su número de infracción cuando llame para pagar. También puede dejar su pago en cualquier de las dos cajas de depósito ubicadas delante del Tribunal en el 140 E. 5th Street o al sur del estacionamiento al oeste del Ayuntamiento en el 31 E. 5th St. Se aceptan los pagos con cheque u orden de pago. Extienda los cheques u órdenes de pago a nombre de 'Tempe Municipal Court'. Los pagos dejados en las cajas de depósito después de las 9:00am serán tramitadas el siguiente día laboral Si necesita más información sobre los pagos, acceda a <http://www.tempe.gov/court/fines.htm>

OPCIÓN "B" IDENTIFICAR AL CONDUCTOR

Si usted no era el conductor del vehículo cuando la infracción ocurrió, usted puede identificar al conductor en la sección "B" en la página 2 y devolverla en el sobre provisto antes de su comparecencia. **DEBE INCLUIR UNA FOTOCOPIA CLARA Y AMPLIADA DE SU LICENCIA DE CONDUCIR PARA SOLICITAR QUE SE LE EXCLUYA COMO CONDUCTOR DEL VEHÍCULO O PARA NOMINAR A OTRO CONDUCTOR.** Si rechazan el nombre nominado el Tribunal le notificará a usted.

OPCIÓN "C" SOLICITAR UN JUICIO/AUDIENCIA DE TRÁNSITO (No solicite una audiencia si usted no fue el conductor – vea la opción B)

Si usted quiere disputar esta infracción, llene la sección C en la página 2 y devuélvala en el sobre provisto a más tardar cinco (5) días laborales antes de la fecha de su comparecencia asignada. Le notificaremos de la fecha de la audiencia por correo. Solo tiene que presentarse la fecha de comparecencia que le asignaremos.

Si tiene menos de 18 años, un padre/guardián debe acompañarlo a la acusación formal o a la audiencia, a menos que el padre/guardián legal lo renuncie por escrito.

OPCIÓN "D" ASISTIR A LA CLASE DE MANEJO DEFENSIVO (Si usted escoge esta opción no tiene que pagar la multa al Tribunal, solamente la tarifa de la escuela. Cuando se haya inscrito en la clase, llene y devuelva la sección "D" en la página 2. No llame al Tribunal.)

Si usted participa en la clase, no recibirá puntos en su expediente de manejo de la División de Motores y Vehículos. Usted puede asistir a cualquier de las escuelas de manejo defensivo en el estado de Arizona. Las siguientes escuelas ofrecen clases:

AZ 'Crash Course' in Traffic Safety

East Valley (480) 857-4740 Phoenix Metro (602) 277-0102 West Valley (623) 486-0037
Fuera de Maricopa County 1-800-515-9599
www.azccts.com

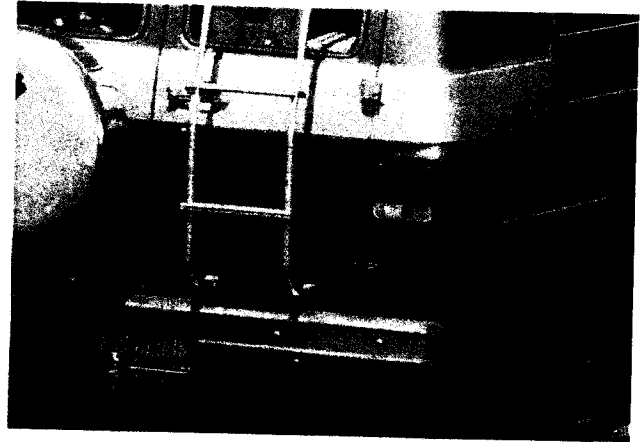
Arizona Defensive Driving School

Dentro de Maricopa County (602) 569-2332
Fuera de Maricopa County 1-800-279-2477
www.AZDDS.com

El Tribunal de Tempe **NO ACEPTA** las clases dadas en la Internet. Los requisitos para asistir al Programa de Manejo Defensivo son: usted no ha participado en ninguna clase de manejo defensivo en los últimos dos años (desde la fecha de la violación hasta la fecha de la anterior); usted tiene licencia de conducir válida o identificación con su fotografía; su infracción no produjo un accidente que causó lesiones graves o muertes; y todavía no han fijado un juicio o audiencia en cuanto a su violación; usted NO tiene una licencia de conducir comercial. Si le entregaron la boleta de tráfico personalmente, tiene que pagar el coste de entrega de \$26 al Tempe Municipal Court antes que se le permita asistir a la clase. Debe traer con usted su licencia de conducir o identificación con fotografía, su boleta y pago en la forma requerida por la escuela el día de la clase. Es obligatorio que usted traiga una copia de su boleta de tráfico a la clase. Si usted ha perdido la boleta debe regresar al tribunal para obtener una copia antes del día de su clase. **SI COMPLETA LA CLASE ANTES DE LA FECHA DE COMPARECENCIA, NO TIENE QUE PRESENTARSE AL TRIBUNAL.**

CITY OF TEMPE
Focus on Safety

Complaint # TF100474



NOTE: The violation has been captured on video and is available for 120 days from the date of violation. The video can be viewed on the Internet at: www.photonotice.com. Enter City Code: **TMPAZ**

NOTA: La infracción se ha capturado en el video y está disponible durante 120 días de la fecha de la infracción. El video se puede ver en el Internet en: www.photonotice.com. Entre Código de Ciudad: **TMPAZ**

TOLL FREE INFORMATION LINE:

You may call the Focus on Safety Call Center 1-800-752-4874 - 7 AM to 5 PM, Monday - Friday, for information regarding this notice and photo speed camera enforcement.

LINÉA TELEFÓNICA DE INFORMACIÓN GRATUITA:

Para mas información sobre esta notificación y camaras de foto velocidad, llame al Centro de Enfoque en Seguridad, de Lunes a Viernes entre 7 AM y 5 PM, 1-800-752-4874

DANIEL ARTHUR GUTENKAUF
1847 E APACHE BL # 41
TEMPE AZ 85281





STATEMENT OF TECHNOLOGY: REDFLEXspeed FIXED SPEED CAMERA SYSTEM

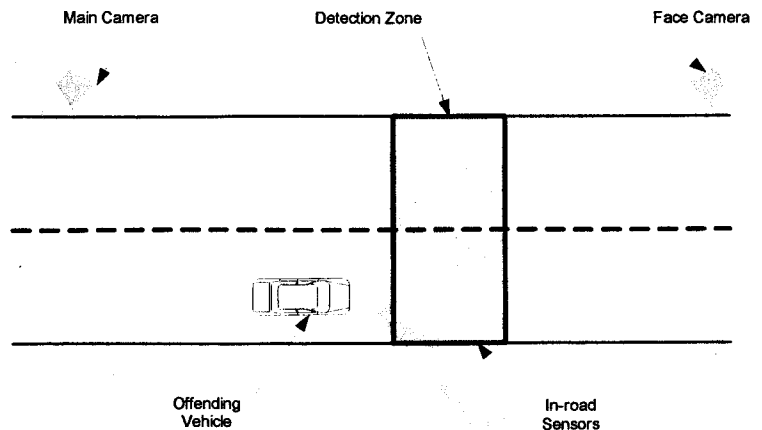
The REDFLEXspeed Camera System measures the speed of each vehicle that passes over the inroad sensors, and triggers a sequence of images, should the vehicle travel equal or greater than the threshold speed set in the system.

The camera system may record:

- 2 still images and 1 video sequence
- The databar may include location, description, date, time, frame, speed limit, lane, vehicle speed, and elapsed time. The camera system imprints this data at the top of all full-size still images.

Each REDFLEXspeed system consists of a Main Camera, which provides the rear license plate image and a video sequence of the offending vehicle, and a Face Camera, which provides an image of the driver in the offending vehicle.

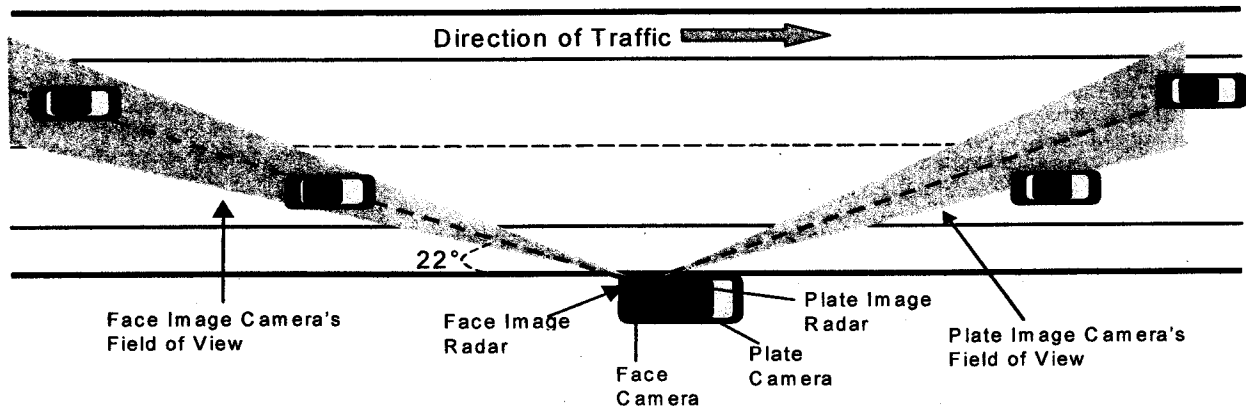
The Main Camera is connected to the inroad sensors, which are constantly active. The speed is determined by performing a time-distance calculation. When the Main Camera detects a speed violation in the inroad sensor detection zone, the Face Camera captures an image of the driver in the offending vehicle.



As the vehicle proceeds over and leaves the inroad detection zone, the Main Camera captures an image of the license plate of the offending vehicle. A video sequence is captured from the Main Camera at a predetermined amount of time before and after the violation.

The system uses encryption and a proprietary format to safeguard the image evidence against alteration. The system gives each still image and its data a unique signature to confirm its authenticity. Public key cryptography and additional encryption processes secure the transmission process.

STATEMENT OF TECHNOLOGY: REDFLEX SMARTCAM MOBILE SPEED VAN SYSTEM



The SMARTCAM Speed Photo Radar System measures the speed of motor vehicles. The "face" image radar determines the vehicle's speed and its presence. The "plate" image radar detects vehicle presence only. As a vehicle passes through the face image radar's beam, it determines if the vehicle is traveling at a speed greater than or equal to the enforced speed limit. If so, the photo radar system automatically triggers the cameras and flashes to capture images of the vehicle.

The SMARTCAM Speed Photo Radar System operates with two or more integrated, digital SMARTCAM cameras. The front-image camera faces out of the vehicle's rear window to capture the face and (if present) license plate. The rear-image camera is positioned to face out of the rear-side window to capture images of the departing vehicle's license plate.

The camera system records two separate images for each speeding violation. The violation date, time, location, detected vehicle speed and posted speed limit are imprinted onto the databar, which is displayed at the top of the images.

The System uses encryption to safeguard the image evidence against alteration. At the scene, the System gives each image and its data a unique signature to confirm its authentic status. Public key cryptography and additional encryption processes secure the transmission process.

DEFENDANT INFORMATION

The City of Tempe provided you with an opportunity, via US mail, to voluntarily respond to the summons and complaint. The Court has not received a voluntary response. As a result, you have now been personally served in accordance with the Arizona Rules of Civil Procedure.

To respond, please refer to the options listed on the back of the accompanying complaint.

If paying the fine, you must pay the total amount listed on the complaint accompanying this document, which includes \$26 personal service fee.

If attending defensive driving school, the \$26 personal service fee must be paid first to the Tempe Municipal Court. If paying by phone, please wait 3 court days from the date you receive this document before paying to allow time for processing.

If submitting a copy of your driver's license and/or identifying a new driver, you must also pay the \$26 personal service fee.

ALL FINES, SANCTIONS AND/OR FEES CAN BE PAID AS FOLLOWS:

- **BY PHONE, USING A MAJOR CREDIT CARD / DEBIT CARD WITHIN MARICOPA COUNTY AT (480) 350-8800 OR OUTSIDE OF MARICOPA COUNTY AT 1-877-729-2687**
- **IN PERSON, AT THE TEMPE MUNICIPAL COURT BY CREDIT/DEBIT CARD, CASH, MONEY ORDER, CASHIERS/CERTIFIED CHECK, OR PERSONAL CHECK WHEN APPROVED BY THE COURT**
- **THROUGH THE MAIL BY CREDIT CARD, MONEY ORDER, CASHIER/ CERTIFIED CHECK, OR PERSONAL CHECK APPROVED BY THE COURT SENT TO TEMPE MUNICIPAL COURT, 140 E. 5th ST., TEMPE, AZ 85281 – DO NOT SEND CASH**
- **BY PAYMENT AT TWO AVAILABLE DROP BOXES, LOCATED AT 140 E. 5th STREET, DIRECTLY IN FRONT OF THE COURT BUILDING, OR ON THE SOUTH END OF THE PUBLIC PARKING LOT WEST OF CITY HALL AT 31 E. 5th STREET**

(Please wait 3 court days from the date you receive this document before paying to allow time for processing)

Failure to pay Court fines and/or fees by the due date may result in the suspension of your driving privilege. In addition, the delinquent debt may be reported to a credit bureau, and/or forwarded to a collection agency, which will include the assessment of additional collection fees. For questions call (480) 350-8271.

OPTIONS PAGE

OPTION A: PAY THE SANCTION
OPCIÓN A: Pagar la Multa

Fine Amount: \$ 197.00
Multa

Citation #: TF100474
Infracción #

Violator Name: DANIEL ARTHUR GUTENKAUF
Nombre del Infractor

☐ Check (make all checks payable to "Tempe Municipal Court")
(Cheque Personal - extender todos los cheques a nombre de "Tempe Municipal Court")

☐ Cashier's Check /Money Order
(Cheque de Caja/Orden de pago)

☐ MasterCard
☐ American Express Discover

Card Number
(Número de tarjeta)
DL #

Exp. Date:
(Fecha de vencimiento)

Credit-card payments can be made by phone within Maricopa County or outside of Maricopa County at 1-877-729-2687.
Los pagos con tarjeta se pueden hacer en persona o por teléfono dentro de al 480-350-8800 o afuera al 1-877-729-2687.

Card Holder Name:
(Nombre del portador de la tarjeta)

Phone:
(Número de teléfono)

By signing this document, I understand responsibility, (ii) waive your right to a hearing and appeal.

By signing this document, I understand responsibility, (ii) admit responsibility, (iii) waive your right to a hearing and appeal.

OPTION B: IDENTIFY DRIVER

Opción B: Identificar al Conductor

Violator Name: DANIEL ARTHUR GUTENKAUF

Citation #: TF100474

IF YOU WERE NOT THE DRIVER at the time of the violation, you may be liable for the violation. Please provide the name and address of the person who was the driver at the time of the violation. If you are unsure what to do, call the FOCUS ON SAFETY CALL CENTER at 1-800-752-4874.

SI USTED NO ERA EL CONDUCTOR la fecha de la infracción, puede ser responsable por el espacio más abajo. Firme este documento y devuélvalo en el sobre provisto, antes de 1/17/2008. TIENE QUE INCLUIR UNA FOTOCOPIA CLARA de la licencia de conducir y las placas del vehículo o de la licencia fueron robadas a la hora de la violación no es el dueño del vehículo, identifique a la agencia o a la persona a quien se le informó de la violación. Si rechazan el nombre nominado el Tribunal le notificará a usted. Si no sabe el número de cómo contactar al CLIENTE, al 1-800-752-4874.

Name (Last, First, Middle):

(Nombre: Apellido de padre, Nombre de pila, apellido de la madre)

Address (Number & Street):

(Domicilio-número y calle)

City, State, Zip:

(Ciudad, Estado, Código Postal)

I declare under penalty of perjury, the information provided here is true and correct to the best of my knowledge.

Juro bajo la pena de perjurio que la información que he dado es correcta a mi leal saber y entender.

Signature:

(Firma)

Printed Name:

(Nombre en letra de Molde)

Daytime Phone #:

(Número de teléfono durante el día)

Driver's License #:

(Número de la licencia de conducir)

Driver's License State:

(Estado de la licencia de conducir)

Date of Birth:

(Fecha de Nacimiento)

I declare under penalty of perjury, the information provided here is true and correct to the best of my knowledge.

Juro bajo la pena de perjurio que la información que he dado es correcta a mi leal saber y entender.

Daytime Phone #:

(Número de teléfono durante el día)

Arizona Traffic Ticket and Complaint

**Tempe Police Department
c/o Traffic Enforcement Office
P.O. Box 15485
Scottsdale, Arizona 85267-5485**

IF YOU ARE PAYING, make sure this address appears in the window of the enclosed envelope.

Al enviar el pago, asegurese de que esta dirección se vea por la ventana del sobre provisto.

**Tempe Municipal Court
P.O. Box 29612
Phoenix, AZ 85038-9612**

**DANIEL ARTHUR GUTENKAUF
1847 E APACHE BL # 41
TEMPE AZ 85281**

Without admitting responsibility, by signing, I hereby acknowledge receipt. I declare under penalty of perjury, that all information provided by me on this document is true and correct (see waiver notice on Page 3).

X _____ Daytime Phone # _____
(Signature)

Tear Here

Tear Here

Tear Here

IF YOU WERE NOT THE DRIVER, make sure this address appears in the window of the enclosed envelope.

Si usted no era el conductor, asegurese de que esta dirección se vea por la ventana del sobre provisto.

**Traffic Enforcement Office
P.O. Box 15485
Scottsdale, AZ 85267-5485**

Without admitting responsibility, by signing, I hereby acknowledge receipt. I declare under penalty of perjury, that all information provided by me on this document is true and correct (see waiver notice on Page 3).

X _____ Daytime Phone # _____
(Signature)

Tear Here

Tear Here

Tear Here

Exhibit N

ORIGINAL

Tempe Municipal Court
In And For The County of Maricopa, State of Arizona

08-157270-1/ Declaration Of Service
Arizona Traffic Ticket and Complaint

Defendant	Date of Appearance	Case Number
DANIEL ARTHUR GUTENKAUF	November 17, 2008	TF100474

I, CASEY ARNETT, being qualified under ARCP, 4(d) and 4(e), to serve legal process within the State of Arizona and having been so appointed by Maricopa County Superior Court, did receive on from City of Tempe, an Arizona Traffic Ticket and Complaint, Instructions To The Defendant and a Return Envelope.

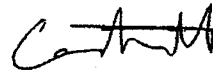
On Tuesday, October 21, 2008 at 4:36 PM, I personally served true copies of these documents Upon the Defendant DANIEL ARTHUR GUTENKAUF by leaving true copies at the Defendant's place of residence with the Defendant(s) personally. The person receiving these documents verbally confirmed their identity. The defendant's vehicle, a 1989 CHEV, Arizona license 386WCD, was observed at the service address at the time of service.

Description of Person Served: C M 50-59 Yrs 6/0 180 Gry Bl
Race Gender DOB or Approx Age Height Weight Hair Eyes

Additional Description: _____

Documents Were Served At The Following residence: **1847 E APACHE BL 41**
TEMPE, AZ 85281

I declare under penalty of perjury that the foregoing is true and correct and was executed on October 22, 2008.
The fee for service of these documents is **\$26.00**



10 - 113 - 1151305

AAA Photo Safety, Inc.
480.668.5953 Office, 480.668.7425 Fax

CASEY ARNETT, Declarant
An Officer Of Maricopa County Superior Court

Exhibit O



Training/Education Services

SOLICITATION NO.: L8-022

**Statewide Traffic Photo/Speed & Intersection
Enforcement Systems, Mobile & Fixed**

Arizona Department of Public Safety
2102 W. Encanto Blvd., Ste 340
Phoenix, Arizona 85009

As mentioned, Redflex provides specific training modules and instruction for parties that will be interfacing and impacted by the implementation of a Photo Enforcement Program. With over two decades of experience, Redflex recognizes the importance of providing focused training with respect to court proceedings.

Redflex institutes comprehensive training programs that are typically 2-days in duration. The programs will be developed in consultation with DPS to ensure that your staff has the necessary program understanding and knowledge to deliver an effective program. Redflex Training Programs adopt adult learning techniques and are designed on a competency based learning framework to impart a clear understanding of the overall purpose and operation of the Redflex Photo Enforcement Program. Specific modules are developed to meet the unique requirements of the Courts, DPS and other relevant personnel. Specific training modules include information on:

- The use and operation of the TPSIE system;
- The use and operation of computer/software systems;
- Citation generation and processing procedures;
- Court testimony processes;
- Data collection and reporting methods. Court administration of the program, including introduction and familiarization; and
- Subpoena processing timelines for evidence development

More Information Re: Select Training Modules

Court Administration Module (CAM)

The CAM is designed to focus of all processes related to the Court. This includes reviewing detailed specifications regarding the technology used in the field. Additionally, our course reviews the historical legislative perspective and the legal framework for which our programs operate in the State of Arizona. As part of the instruction, the CAM presents and assesses common dispute and defense tactics and appropriate and sound counter-measures required for successful prosecution. The CAM training modules are tailored specifically for:

- DPS
- Clerks
- Attorneys
- Witnesses
- • Judges

Exhibit P

Tempe City Council Issue Review Session
Minutes – April 9, 2009

3

Councilmember Shekerjian added that Item #9 lists Historic Preservation and notes that the funds will be used to rehabilitate homes that have been designated as historic in Tempe's historic neighborhoods. She asked about the process used to award that money.

Mr. Hittie responded that the funds go through the Historic Preservation Commission.

Mayor Hallman asked about Item #3, Affordable Housing – Site Acquisition. He asked if it is staff's intention to run those funds through the Housing Trust Fund or separately through the staff process.

Mr. Hittie responded that they would be run separately through the staff process per federal regulations.

CONSENSUS

Move forward as presented.

Follow-up Responsibility: Chris Salomone

Photo Enforcement Update

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Lieutenant Noah Johnson; Deputy Court Manager Nancy Rodriguez; Traffic Engineer Shelly Seyler

City Manager Charlie Meyer summarized that the Photo Enforcement Program is a cooperative effort between the Courts, the Police Department, and Traffic Engineering. Staff will be discussing how the programs came into effect, how the speed limits are set, and how the sites are selected.

Noah Johnson outlined accident statistics for fixed locations.

- The City is broken into three reporting districts and each district compares 2007 to 2008.
- The numbers are down 16%. Many things can affect that, including light rail and traffic volume.
- Photo enforcement is at 17 locations, plus two speed vans positioned anywhere in the City. Other than the locations at 200 S. Rural, 500 S. Rural and 600 S. Priest, all of the other fixed locations are at intersections and do red light and speed on green at the same time.
- The locations at 200 S. Rural, 500 S. Rural, and 600 S. Priest show the highest number of violations and efforts will be made to reduce speed at those locations.
- A significant amount of the fine of \$171 goes to different surcharges.

Shelly Seyler summarized the establishment of speed limits, as well as background information on the established speed limits on Rural Road and Priest Drive. The factors include:

- Prevailing vehicle speed. (This is based on the 85th percentile speed, at which 85 percent of the free-flowing vehicles are traveling at or below. Use of the 85th percentile is based on the theory that the large majority of drivers are traveling at a reasonable and prudent speed. This method is the most widely recognized method, however, in the urban environment use of this method alone may result in speeds that are unsafe for adjacent land use including bicycle and pedestrian activities.)
- Physical features of the roadway, such as horizontal and vertical alignment, sight and stopping distance, land

Tempe City Council Issue Review Session
Minutes – April 9, 2009

4

- widths and raised medians.
- Traffic control characteristic including crosswalks, signals, stop signs and other traffic control.
- Crash experience, which considers severity, cause and type.
- Roadside development and culture, including driveways, bus stops or parking.
- Pedestrian and bicycle activity.
- Traffic calming features, including speed humps and traffic circles.
- Signal timing progression (the speed which would be most efficient for existing signal timing)

She summarized that after conducting a study using this criteria, an appropriate speed is recommended to the City Council who revises the Tempe City Code Chapter 19. She added that there have been concerns regarding the mid-block photo enforcement locations and the City has made efforts to make those visible. The City is proposing to install speed feedback signs. These signs have proven effective in reducing speeds and are currently used in other Valley cities, including Chandler, Gilbert and Mesa.

Councilmember Navarro asked about the change from 40 mph to 35 mph. In a school zone, the signs are different. Has that ever been considered on Rural Road?

Ms. Seyler responded that it has been considered. Staff has tried to emphasize the school locations knowing they are all adjacent to the high schools. Staff feels the speed feedback signs will provide similar results as the increased visibility signs in front of the high school zones.

Councilmember Navarro asked if there was a way to measure how people are interacting in those areas.

Ms. Seyler responded that staff does have the ability to measure speed at different times of the year through two counts throughout the City, so as we go along, we can certainly see how effective we are of increasing that visibility by using the counters at various times of the year.

Councilmember Shekerjian stated that this has been one of the top three things she has asked about on a regular basis and she appreciated staff's efforts. People assume these are speed traps for revenue. She had asked staff for the purpose of photo radar and their answer was to slow people down for safety. If the purpose is to slow people down, then she thought the speed feedback signs are a good suggestion. She also appreciated re-looking at Priest Drive with a study to see if the speed limits are appropriate because the road has changed since the last study.

Mayor Hallman added that most people think a reasonable and prudent speed between University on the south side and the 202 Freeway is not 35 mph but 40 mph. Priest Road is an example of being signed at 40 mph, just as University used to be, and part of his concern is the way in which staff's memo suggests that maybe this was a City Council-driven matter when in 2004, Council requested that staff review speed signs. He didn't remember that, but by the time this conversation happened in March of 2005, staff was presenting a model of creating a big picture of how speeds should be reduced toward the City center. Council was looking at school zones as 35 mph speed zones. That is prudent and reasonable. Council also had the idea of some grand vision that as we toward the urban center, speed would have to be slowed down. The one place we made a mistake was between University and the 202 Freeway. Until the Council took action in March 2005, that roadway was signed at 40 mph from University north, yet staff's memo suggests that it was because of the way it was designed that the speed limit had to be reduced. We may have reduced it to 35 mph between Rio Salado and the 202 Freeway, but he believed from University to Rio Salado it was still signed at 40 mph. The memo goes on to show that the Council changed the speed limit on Rural/Scottsdale Road from the 202 Freeway to University Drive from 40 mph down to 35 mph in May of 2005. Council made a mistake in the impression Council gave to the public. He would like staff to at least go out and measure speeds when traffic is moving freely and figure out what that 85th percentile is.

Tempe City Council Issue Review Session
Minutes – April 9, 2009

5

He continued that in looking at a chart that shows 120,000 violations between December 2007 and January 2009, it doesn't look good that the next southbound location gets only about 35,000 citations. That is because traffic backs up at University, and the light at 6th Street is so badly timed that anyone coming across Rio Salado is almost sure to miss it so most people slow down anyway before they get to the photo radar location. Photo radar is an appropriate use of resources because we can't have officers at every one of these locations. It is appropriate that the City is using technology to help enforce the law and protect the community, but that one location sticks out. If we are worried about 35 mph, we would have that speed camera at the bridge and not on Rural south of Rio Salado. People accelerate northbound once they have passed that camera and get back up to 45 or 50 mph as they approach the 202. If we are serious that the really dangerous location is where Playa del Norte comes into Rural, we should move the speed camera. We either need to put up big signs to truly achieve reduction of speed there or recognize that the average person thinks a safe and prudent speed is 40 mph. Maybe we tweak the camera and make everyone understand that 46 mph gets a ticket. Are we giving a lot of tickets between 46 mph and 50 mph currently and if the speed were adjusted to 40 mph, would we eliminate a huge number of these violations? He didn't think safety should come at the expense of practicing good sense. If anyone is getting revenue, it's the state, with 84% of the fines going to the state. The City is collecting approximately \$35 and we are trying to pay for the cost of our criminal justice system appropriately. The State is using it to pad things like Medical Services Enhancement Fund, Fill the Gap Fund, DNA Testing, and the Probation Fee. Those come out of a fine someone is paying for inadvertently or intentionally speeding through Tempe.

Councilmember Shekerjian suggested performing another traffic study for the area between Rio Salado Parkway and University.

Mayor Hallman also suggested that staff figure out how better to collect data for the traffic studies because the reporting districts are the blocks between the streets. Staff is stuck trying to gather data and best interpret it when it is not collected to figure out what is going on between Rio Salado and University on Rural. It is structured to see what is going on the block west and the block east of that address. The 200 S. Rural camera location 0417 also appears on the 500 S. Rural Road camera. How did staff allocate between those reporting districts?

Lt. Johnson responded that it was done by the Crime Analysis Unit using a computer generated process. The difficulty with the accident reporting is that an officer reports an accident as to and from the intersection.

Mayor Hallman clarified that depending on which side of the street it is assigned to, the reporting district might run from College Avenue to Myrtle, for example, and there could be an accident northbound on the east side of the road on Myrtle and an accident southbound on the west side of the road on College reported to the same reporting district and the data would not tell the difference. We could be assigning changes in traffic pattern for one street when it may have occurred on the other. That is a difficulty we face in analyzing this data. It is for crime data collection not traffic accident data collection. He suggested for these locations gathering the specific data about real accidents over a time series to provide good information.

CONSENSUS

Move forward as things are.

Measure and analyze speeds between University and Rio Salado on Rural (northbound).

Follow-up Responsibility: Noah Johnson, Shelly Seyler

Exhibit Q



Minutes City of Tempe Transportation Commission August 11, 2009

Minutes of the City of Tempe Transportation Commission held on Tuesday, August 11, 2009, 7:30 a.m., at the Transportation Center Don Cassano Community Room, Tempe, Arizona.

(MEMBERS) Present:

Don Cassano, Ben Goren, Marcellus Lisotta, Jayson Matthews, Gary Roberts, Peter Schelstraete, Augustus Shaw IV, Edward Smith, David Strang

(MEMBERS) Absent:

Bill Haas, Catherine Mayorga, Steven Saiz, Marco Valenzuela, Joan Westlake, Bryan Young

City Staff Present:

Darcie Bontems, Kent Clayton, Joe Clements, Dawn Coomer, Carlos de Leon, Cathy Hollow, Noah Johnson, Gregg Kent, Amanda Nelson, Kerby Rapp, Bonnie Richardson, Shelly Seyler, Sue Taaffe

Guests Present:

Michael Grandy (Kimbly-Horn), Bryan Patterson (Kimbly-Horn), Ken Perron (Tempe Resident)

Jayson Matthews called the meeting to order at 7:36 a.m.

Agenda Item 1 – Consideration of Meeting Minutes

Edward Smith made a motion to approve all minutes. David Strang seconded the motion. The following minutes were approved:

- Multi-Modal Planning and Project Review – April 8, 2009
- Transportation Commission - June 9, 2009
- Multi-Modal Planning and Project Review – June 10, 2009
- Ad hoc Transit Fund Committee – June 22, 2009
- Public Involvement and Marketing Committee – July 13, 2009

Agenda Item 2 – Public Appearances

There were no public appearances.

Agenda Item 3 – Photo Enforcement Update

Lieutenant Noah Johnson presented the following information:

- Lieutenant Rapp will be taking Lieutenant Johnson's place in traffic enforcement.
- Rural Road and Southern Avenue was the last intersection installed in November of 2008.
- Seven intersections have two approaches each with red light and speed enforcement.

Transportation Commission
August 11, 2009

2

- There are three midblock speed detection sites at 200 S. Rural Road, 500 S. Rural Road, and 600 S. Priest Drive.
- Two mobile vans are now being deployed without an operator.
- Photo enforcement trailers may replace vans in the future.
- The process for issuing traffic violations begins with Redflex reviewing photos and then forwarding them on to PD who then utilizes three civilian officers to review violations using side by side driver license comparison.
- There were some legal issues at the beginning of last year regarding civilian traffic enforcement, but those issues have since been resolved.
- In addressing public perception challenges, traffic enforcement has added additional speed limit notification signs, digital speed feedback signs, two photo enforcement warning signs leading up to mobile units, and traffic engineering is in the process of conducting speed limit surveys.
- More time is needed to determine the true impact of photo enforcement on accident reduction.

Commissioner Ben Goren expressed concern that speed limits throughout Tempe were inconsistent.

Lt. Noah Johnson explained that there is never a change of more than ten miles per hour from one speed limit zone to the next, and noted that the Traffic Bureau does not set the speed limits.

Commissioner Jayson Matthews suggested Traffic Engineering provide an overview as to how speed limits are determined.

Carlos de Leon added that five years ago Traffic Engineering along with the Transportation Commission conducted a review of speed limits throughout the city and as a result came up with options for changes that were later adopted by Council. The information can be made available at the next scheduled commission meeting.

Commissioner Peter Schelstraete asked how traffic violations are handled with out of state plates or company vehicles.

Lt. Noah Johnson stated that a gender match is typically used in place of the side by side drivers license comparison for out of state violators unless a criminal offense has been committed. Lt. Johnson also noted that nine out of ten times businesses will report employees who receive a notice of violation.

Agenda Item 4 – First Street Alignment Study

Shelly Seyler, Ryan Patterson (Kimley-Horn), and Michael Grandy (Kimley-Horn) presented the following information:

- Consultants from Kimley-Horn are assisting the city with analysis for the First Street Realignment.
- The study looks at feasible alternatives to realign First Street between Farmer and Ash to improve east and westbound continuity.
- The study area includes the south intersection of First Street and Farmer, north intersection of First Street and Farmer Avenue, First Street and Ash and Rio Salado Parkway and Ash.
- Three alternatives to the current alignment were presented.
- Option one is the curved linear option, which works to minimize angle points and also requires some realignment of Farmer Avenue. Option one will have right-of-way implications, but will allow continuous movement and left turns.
- Option two is similar to option one, but requires minimal curves and would shift the road south.
- Option three introduces two roundabouts and will have significantly higher right-of-way implications.
- Variations of all three options are possible.
- Next step is to come up with a recommended preferred option.

Transportation Commission
August 11, 2009

3

Commissioner Peter Schelstraete had questions regarding bicycle safety in a roundabout.

Michael stated bicyclists would have the option of acting as a motor vehicle and taking the lane or acting as a pedestrian and walking through the cross walk. Michael also added that bicycle lanes do not usually work correctly in a roundabout.

Jayson Matthews added a benefit to the roundabout is its traffic calming capabilities.

Agenda Item 5 – Ad hoc Transit Fund Committee Update

Joe Clements presented the following information:

- The Ad hoc Committee has identified a preferred overall financial strategy which involves using \$40 million in fund balance to partially retire debt principal and reducing a total of \$7.4 million in annual recurring operating expenses by phasing in major reductions over the current fiscal year and fiscal years 10-11 to 12-13.
- The preferred financial strategy would balance forecasted costs with revenue and provide an estimated fund balance of \$10 million.
- Additional information will be provided at future commission meetings.

Agenda Item 6 – Multi-Modal Planning and Project Review Update

Peter Schelstrete requested this agenda item be moved to the September Transportation Commission agenda.

Agenda Item 7 – Future Agenda Items

- Light Rail Ridership

Jayson Matthews adjourned the meeting at 9:10 a.m.

The Commission's next regular meeting will be held Tuesday, September 8, 2009 at 7:30 a.m. in the Don Cassano Community Room, 200 E. Fifth Street, Tempe, Arizona.

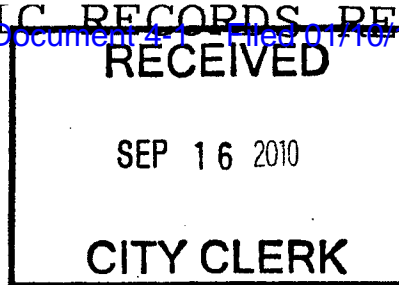
Prepared by:
Darcie Bontems

Reviewed by:

Carlos de Leon

Exhibit R

City of Tempe



9-16-2010

This is a request for public records pursuant to A.R.S. 39-121.

I wish to inspect and obtain a **CERTIFIED COPY** of the following public record: 4) name of Police Project Manager under 2.1 Customer Obligations of Redflex Contract

- 1) Certified Copy of Agreement between City of Tempe and Redflex Traffic Systems Inc with signatures Doc. 20070719 sd 1234
- 2) Certified copy of Redflex Procedural Manual for Tempe, AZ containing instructions for issuing red light and photo speed citations.
- 3) Certified copy of Redflex training packet for Tempe Court personnel

"A record which is required by law to be kept or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said, or done is a public record."

Matthews v Pyle, 251 P.2d 893, 75 Ariz. 76

A.R.S. 38-231 et seq. requires that the loyalty oath of every public officer be taken, subscribed, and filed of record.

A.R.S. 39-121.01 D(1) provides that any person may request to examine or be furnished copies of any public record, and the custodian of such records *shall* furnish copies.

A.R.S. 39-121.02 C. provides that any person denied access to or the right to copy such records shall have a cause of action against the officer for damages.

A.R.S. 13-2407 A.(4) provides: A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly destroys, conceals, removes or otherwise **impairs the availability of any public record. (Emphasis added)**. Tampering with a public record is a class 6 felony

This request is NOT for a commercial purpose.

I agree to pay for reasonable copying costs (estimate requested)

Daniel Gutenkauf
 Daniel Gutenkauf
 c/o 1847 E. Apache Blvd. # 41
 Tempe, Arizona 85281
 Telephone (480) 966-7018

Exhibit S

City of Tempe
P. O. Box 5002
20 East Sixth Street
Tempe, AZ 85280
480-350-8324
www.tempe.gov



Financial Services
Central Services

September 29, 2010

Mr. Daniel Gutenkauf
C/O 1847 East Apache Blvd. #41
Tempe, Arizona 85281

Subject: Follow-up Response to Public Records Request of September 16, 2010

Dear Mr. Gutenkauf:

The City has been unable to locate the remaining two documents that you requested as part of the September 16, 2010 public records request. The documents requested include:

- a) Certified copy of Redflex procedural manual for Tempe, AZ containing instructions for issuing red light and photo speed citations.
- b) Certified copy of Redflex training packet for Tempe Court personnel.

Employees who assisted in this search had no recollection of having received these documents and were unable to locate them during their search.

Feel free to contact me at 480-350-8516 if you have any questions regarding this communication.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Greene'.

Michael Greene
Central Services Administrator

C. Karen Fillmore, City Clerk's Office

Exhibit T

(c) 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.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

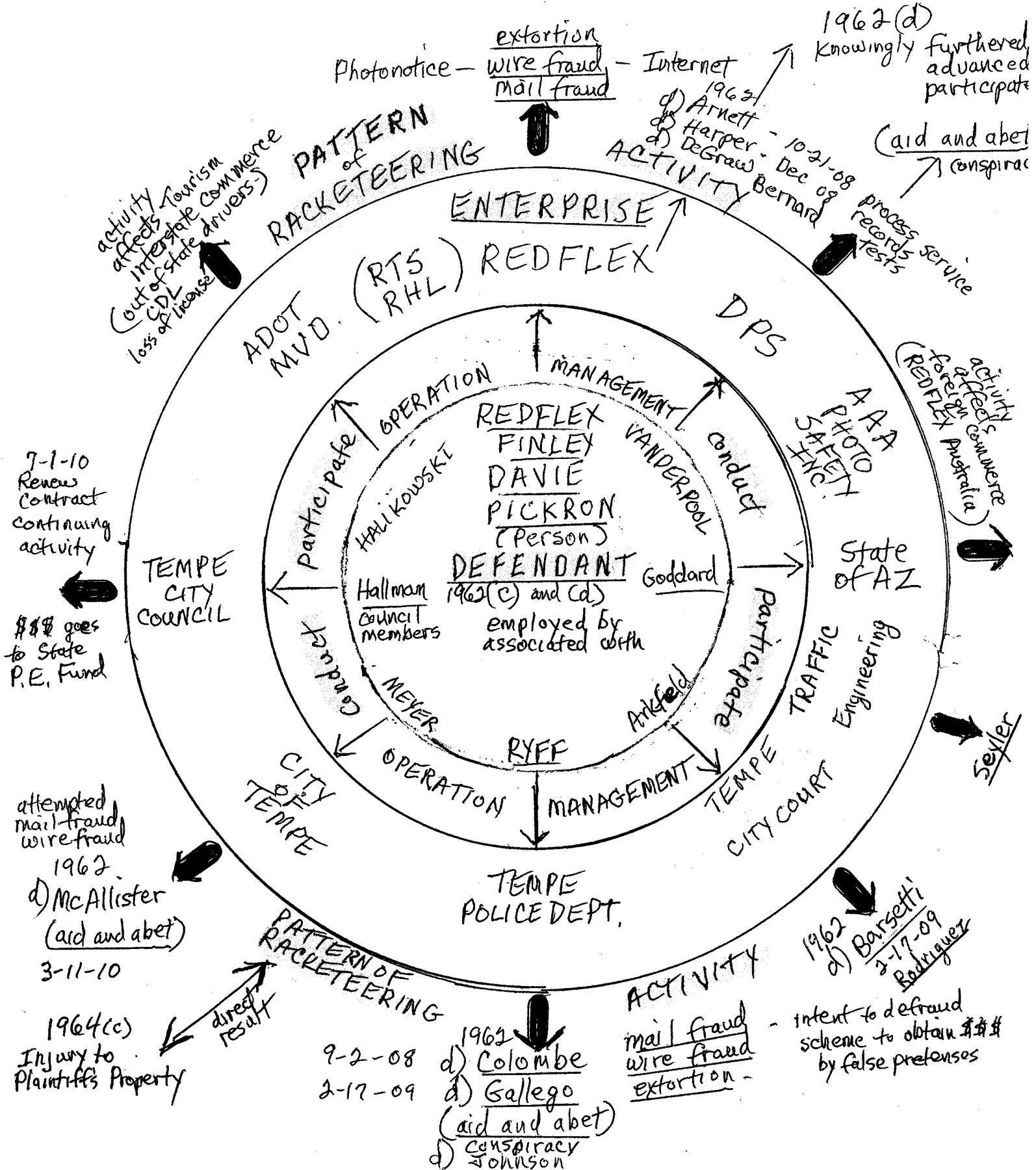


Exhibit U

Chain Theory of Conspiracy

42 USC 1983

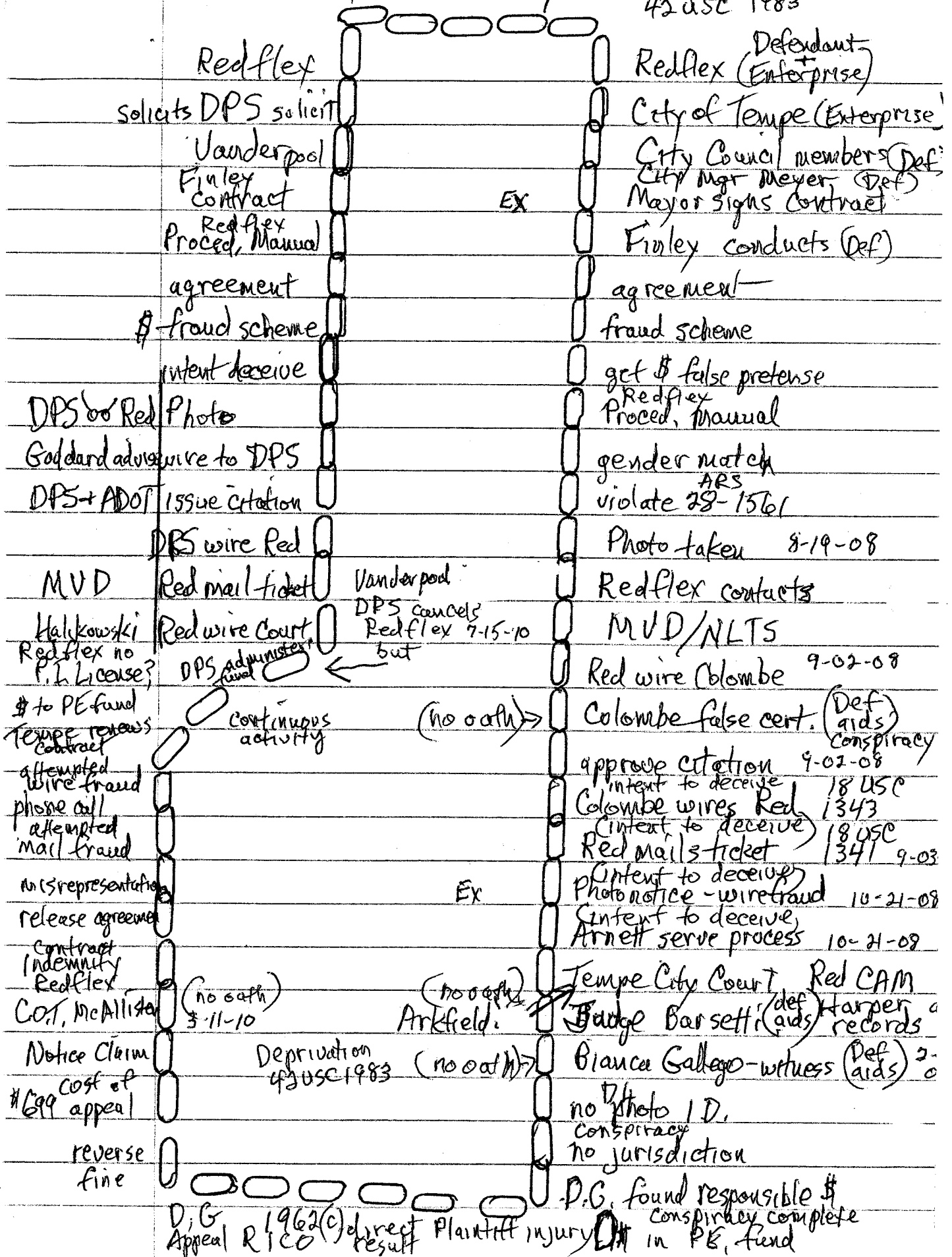


Exhibit V

[Log Out](#)[Home](#)[Pay Online Now](#)[Privacy Policy](#)[FAQ](#)[Customer Service](#)**Citation:** TF100474**License Plate:** 386WCD**City Code:** TMPAZ**Name:** DANIEL ARTHUR GUTENKAUF**Date:** 19-AUG-08**City:** Tempe**State:** AZ**Location:** 200 S Rural RdA Scene ImageB Scene ImageFace Image

Adobe Flash Player is required to use this facility. Click the image below to download.



Note: Some computers/networks block streaming videos. These are typically government, libraries, schools and some companies.

Due to formatting constraints this video is a representation of the original evidence and is not intended for court purposes.



Press play to view your video

Exhibit W

City of Tempe, AZ
Photo Enforcement Program
Solicitation No.: 07-045



Record Keeping

Redflex will maintain all images produced by mobile speed camera/radar enforcement and red light camera systems for a period of one year from the date of the violation disposition. All images recorded and stored will remain the property of the City of Tempe. Redflex will maintain the appropriate chain of custody of evidence that meets the requirements of the City of Tempe, the Tempe Police Department and the Tempe City Attorney's Prosecution Division.

For a period of one year from the date of occurrence, Redflex will maintain and provide all voided, un-actionable and unusable images or negative. Redflex will maintain sufficient records to ensure compliance with Arizona Revised Statutes 28- 1560 and the rules of the Supreme Court Administration.

Training

The Redflex Training Services Department will help the City develop the knowledge and skills required to successfully deploy, maintain and operate an effective Red Light Camera Program. Participants will be trained utilizing specific training modules, each that address specific components of the program; additionally each participant will gain valuable hands-on experience using Redflex hardware and software. Training is tailored to meet the needs of the customer, and can be delivered in a variety of formats, including:

- Pre-designed courses
- On-site instructor-led training
- Computer-based training
- Self-directed training
- One-on-one training
- In-field training
- Train-the-trainer instruction

Redflex institutes comprehensive training programs of up to two-days. Redflex Training Programs adopt adult learning techniques and are designed on a competency based learning framework to impart a clear understanding of the overall purpose and operation of the Redflex Photo Enforcement Program. Specific modules are developed to meet the unique requirements of the Courts, Law Enforcement and other relevant City personnel. Specific training modules include information on:

- Camera equipment orientation
- WebOps: The Redflex web-based citation authorization module
- Camera maintenance, support & certification
- Court documentation, review & defense protocols

Working closely with the Court and Tempe Police personnel, additional specific training on topics includes:



City of Tempe, AZ
 Photo Enforcement Program
 Solicitation No.: 07-045



- Court administration of the program, including introduction & familiarization
- **Subpoena processing** timelines for evidence development
- Development and **coordination of hearing schedules**
- **Evidence introduction** and familiarization
- Development and coordination of the Juvenile Court process

Court Testimony

Redflex provides jurisdictions with **comprehensive adjudication** and court support services, including the development of a **court file transfer interface**, court training modules, provisions for **court packages** for each hearing and **expert witness testimony**.

Redflex will provide a **comprehensive program to support the City's Municipal Court proceedings**. We will provide documentation and witnesses as necessary; at no additional cost to the City.

For all installed systems across the U.S., Redflex has analyzed existing data and Redflex supports a **99% conviction rate**. In many of our existing programs **less than 1%** of all citations result in court proceedings. The low numbers of contested cases are indicative of the high quality and high resolution of the evidence that is produced by Redflex solution.

Evidence Packages

Redflex will provide the City with a designated court/evidentiary package for each requested hearing. Court packages are jurisdiction specific, but each typically includes:

- **Multiple full-color Scene Violation Images**, showing the violating vehicle before entering the intersection during the red light phase, and in mid intersection during the red light phase, with superimposed Databar showing all required violation data
- A full-color, **'zoomed-in', enlarged, license plate image**
- **Full motion video sequences**
- Complete violation data comprising the **data transmittal sheets**
- Statement of Technology
- **Chain of Custody** of the proper handling of the images along with the proper functioning of the camera system
- Other information as defined in consultation with the City and Municipal Courts including correspondence regarding the violation.

Expert Witness

In addition to Court Training and Workshops tailored for court personnel such as judges, officers, clerks and commissioners, Redflex provides each jurisdiction with a qualified and competent expert witness to testify regarding the accuracy of the system and program. This individual will testify to the accuracy, calibration, maintenance, repair records, technical operational and effectiveness of the Redflex System.



Exhibit X

City of Tempe, AZ
 Photo Enforcement Program
 Solicitation No.: 07-045



Iowa; Cincinnati, Ohio; Auburn, Washington; Plano, Texas; Baldwin Park and Newark, California.

I am solid in my recommendation that Redflex is the best company for the City of Columbus, as are my counterparts on the committee. Each member avored Redflex over all of the competition.

Lt. Jeff Blackwell
 Columbus, Ohio Police

We are particularly proud to announce that in the last 18 months we have executed 36 new contracts, including great Cities like: **El Paso, Texas; Riverside, California; Lancaster, California; Montebello, California; Walnut, California; Columbus, Ohio and Albuquerque, New Mexico.** Each of these cities completed a yearlong diligent RFP and evaluation process and as a result of these efforts, Redflex was selected as the best partner for each City. In fact, the cross-functional selection committee voted

unanimously in favor of Redflex over all the competition

7. Resumes of key personnel. Identify the Project Manager including specific qualifications and experience related to the management and development of projects similar in scope.

Project Methodology and Key Personnel

Upon successful execution of the contract, Redflex will promptly transition to a project management mode, upon which, the designated program manager will commence Phase I: Project Kick-Off activities. Due to the scope, magnitude and importance of working with the City of Tempe, Redflex is allocating our most experienced and tenured Project Manager, Mr. Joe Bernard; who we profiled on the "Project Manager" section of the current proposal.

Project Manager

Leading the charge is Mr. Joe Bernard. As the designated Project Manager, Mr. Bernard has lead programs in over 20 individual jurisdictions, incorporating over 200 fully operational digital systems. Mr. Bernard will act as the single-point-of-contact for the City during the implementation phase of the program.

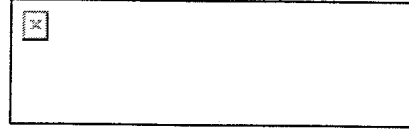
Mr. Bernard is based in Scottsdale and has been with Redflex for over 9 years and has extensive supervisory experience in project management, operations, and city personnel training. Mr. Bernard has aided in the successful implementation of programs in dozens of cities. He directs and coordinates all activities related to the technology implementation including: project plan development, timelines and goal specification, staffing & scheduling, contingency plan development and resource allocation.



Exhibit Y

Memorandum

Police Department



Date: April 29, 2010

To: Mayor Hallman and Tempe City Council

From: Lieutenant Kerby Rapp, Police Traffic Bureau

Subject: Review of Fixed Radar Locations in Tempe

Mayor and Councilmembers,

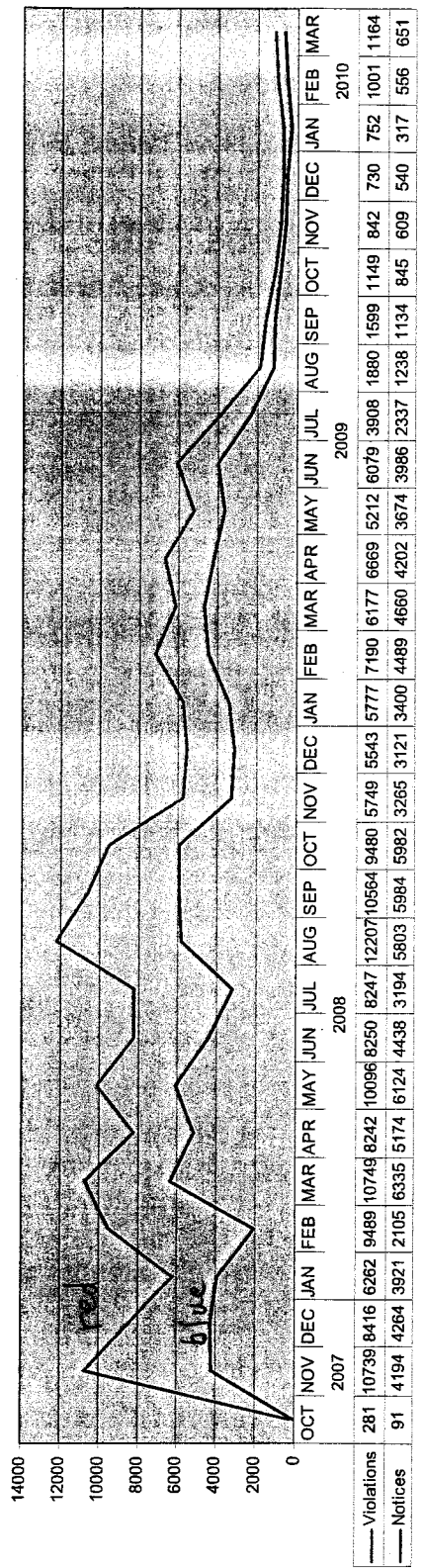
The attached two slides depict the total number of violations (red) and mailed notices (blue) that have occurred at each of the three fixed radar locations.

On Priest Drive, for example, in the month of February 2010, there were 661 violations. After our internal quality control measures along with Redflex's review, 356 of the violations were deemed suitable for a Notice of Violation or a Traffic Citation to be issued. 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. The difference is accounted for in poor photos, test flashes, and other matters which prohibit the violation from meeting the required standard for the issuance of a notice.

You will note that after the 'Go Live' dates, each site saw an increase in activity that lasted for a few months, and then a prolonged general decrease in activity. This is a common occurrence for fixed radar locations.

We anticipate that moving forward violations will remain fairly consistent with the numbers reported over the past six months.

200 S. Rural Rd. (NB) - Fixed Speed
Go Live - 10-27-2007



500 S. Rural Rd. (SB) - Fixed Speed
Go Live - 10-29-2007

