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Plaintiff, *in propria persona*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

DANIEL ARTHUR GUTENKAUF,
 an unmarried man

Plaintiff,

Vs.

THE CITY OF TEMPE, a municipal corporation and
 body politic, et al.:

Defendants.

)
)
) Civil Action No.
) 2:10-cv-02129-FJM
)
) **PLAINTIFF'S RESPONSE TO**
) **MOTION TO DISMISS BY**
) **DEFENDANTS AAA PHOTO**
) **SAFETY INC., PICKRON,**
) **AND ARNETT**
)
) **(Oral Argument Requested)**
)
)
)

Plaintiff hereby submits his Response to Rule 12 (b)(6) Motion to Dismiss by Defendants AAA PHOTO SAFETY INC., ("AAA PHOTO") and DAVID PICKRON and STEPHANIE PICKRON, ("the PICKRONS") and CASEY ARNETT ("ARNETT"). Plaintiff's Response to MTD is supported by Affidavit of Plaintiff, exhibits, and the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants AAA PHOTO, PICKRONS, and ARNETT assert that Plaintiff has failed to state a claim upon which relief can be granted, pursuant to Rule 12 (b)(6), F. R. Civ. P. Federal courts construe *pro se* complaints liberally and thus, *pro se* complaints are held to less rigorous

standards than formal pleadings drafted by lawyers. *Haines v. Kerner*. 404 U.S. 519, 92 S.Ct. 594, 30 L. Ed. 2d 652. A motion to dismiss raising the issue at the initial pleading stage, however is not favored and *sua sponte* dismissals for failure to state a claim are strongly disfavored. *Acker v. Chevira*, 188 Ariz. 252, 934 P.2d 816 (App. 1997). In considering such a motion, all material allegations of the Complaint are taken as true and read in the light most favorable to the plaintiff. *Fidelity Security Life Insurance Company v. State of Arizona*, 191 Ariz. 222, 954 P.2d 580 (1998) A motion to dismiss for failure to state a claim admits the truth of facts alleged, for purposes of the motion, and merely contends that plaintiffs are not entitled to relief under any legal theory. *State v. Superior Court of Maricopa County* (1979) 123 Ariz. 324, 599 P.2d 777.

The motion to dismiss *should not be granted* unless it appears that the plaintiff would not be entitled to relief under any state of facts susceptible of proof under the pleadings. *Doe ex rel. Doe v. State of Arizona*, 200 Ariz. 174, 24 P3d 1269 (2001). *San Manuel Copper Corp. v. Redmond* (App. 1968) 8 Ariz. App. 214, 445 P.2d 162. If the deficiency in the Complaint is one that can be cured by further pleading, *the motion should be denied* or, if granted, the plaintiff should be given leave to amend. *Sun World Corp. v. Pennysaver Inc.* 130 Ariz. 585, 637 P.2d 1088 (App. 1981) *In re Cassidy's Estate*, 77 Ariz. 228, 270 P.2d 1079 (1954).

I. Facts regarding Defendants AAA PHOTO, ARNETT, and the PICKRONS

Defendants AAA PHOTO, ARNETT, and the PICKRONS, state on page 4, line 16 of their MTD that "AAA Photo Safety Inc. through a verbal agreement was an independent contractor for Redflex Traffic Systems Inc. to serve pleadings." Absent formal discovery, Plaintiff has no way to ascertain if it was, in fact, simply *a verbal agreement* with Redflex. However, in a letter dated February 7, 2007, to City of Tempe Procurement Office, Redflex Vice President Aaron M. Rosenberg asserts in paragraph 6, page 2, that "Redflex Traffic Systems has a long-

1 standing relationship with AZ Photo Safety, to provide process serving for unpaid citations on
2 behalf of our Arizona municipalities.” (See Plaintiff’s **EXHIBIT A**, attached hereto).

3 And on page 3, second paragraph of the Redflex letter, Mr. Rosenberg suggests two
4 options for City of Tempe’s choice of Process Service Vendor. The second option provides that

5 “Redflex can retain the relationship with AZ Photo Safety. *and contract on behalf*
6 *of the City to provide this service.* In the second option, Redflex will pay AZ Photo
7 Safety for the successful serves, and invoice the City of Tempe for the funds collected
by the Court for the process service fee.” (*italics and emphasis added*)

8 The Arizona Secretary of State records for Arizona Photo Safety shows it is a Trade Name for
9 the Fullname AAA PHOTO SAFETY, INC. (See Plaintiff’s **EXHIBIT B**, attached hereto).

10 In an article on photo speed tickets, titled “Gotcha”, published in the New Times Weekly,
11 dated February 08, 2007, journalist Ray Stern reports “Typically, *process-serving companies like*
12 *AAA Photo Safety contract through a private photo-enforcement company such as Redflex*
13 *Traffic Systems in Scottsdale*, which is employed by Scottsdale, Chandler. The way the program
14 generally works is that once a violation is recorded, the private company collects the electronic
15 data, including the photographs. (See **EXHIBIT C**, attached hereto). Plaintiff intends to call
16 New Times journalist Ray Sterns as a witness at the requested jury trial, to counter any hearsay
17 evidence objections.
18

19 The website <http://site.aaaphotosafety.com/azps/homes.do> states that

20 “AAA Photo Safety, Inc. is the premier photo enforcement company
21 in the State of Arizona. Our use of customized programs meets the
specific needs of *each government entity with whom we contract.*

22 Based on the Defendant’s own wording on its website, it appears that they did not simply
23 have a verbal agreement, as AAA PHOTO says in its Motion to Dismiss, but *a contract* either
24 with Defendant’s REDFLEX or CITY OF TEMPE. (See **EXHIBIT D**, attached hereto)
25

In the 24- page New Times article, Defendant DAVID PICKRON is quoted extensively.

1 That article makes reference to one of Pickron's process servers, Danny Arnett of Gilbert,
2 (believed to be the brother of Defendant CASEY ARNETT, according to public records). The
3 New Times article states "The implication was that Arnett wrote whatever he thought it would
4 take to make his affidavit meet legal requirements, knowing that what he was stating was false."
5 Citing Maricopa County Superior Court Judge Anna Baca, "Baca ruled that Arnett had violated
6 court rules, and his license was later revoked."

7
8 Defendants assert on page 4, line 21 of their Motion To Dismiss "David Pickron is
9 President of AAA Photo safety, Inc, and a Stockholder of AAA Photo Safety, Inc. Although he
10 was also the President of the company, he was not even the manager who assigned the work to
11 Casey Arnett." That fact, however, even if true, does not relieve DAVID PICKRON of liability
12 under the legal theory of principal and agency, *respondeat superior*, or failure to train or
13 supervise. Although Defendants assert that "Stephanie Pickron had no involvement at all", for
14 purposes of collecting damages, it is well- established law that the spouse has to be joined as a
15 party and given notice of the Complaint as a matter of law, in order for Plaintiff to reach assets
16 of the marital community, should liability be established for the acts or failure to act by her
17 husband.

18 **II. Plaintiff has clearly stated a cause of action under 42 USC 1983,**
19 **and has stated facts, and provided evidence of claims**

20 Defendants' Motion To Dismiss conveniently avoids any reference or challenge to the
21 facts articulated under COUNT X of Plaintiff's first cause of action pursuant to **42 USC 1983**,
22 paragraphs 175 through 182. On page 36, paragraph 177 of his First Amended Complaint,
23 Plaintiff alleges "The Arizona Traffic Ticket and Complaint served on Daniel Gutenkauf by
24 CASEY ARNETT on October 21, 2008, at 4:36 pm contained no information regarding height,
25 eye color, hair color, origin, Date of Birth, or driving restrictions, for the ticket Defendant, and

1 the process server knew or should have known, by lack of that information, that no positive
2 identification of the driver had been matched.” (See **EXHIBIT M**, Plaintiff’s First Amended
3 Complaint). Defendant ARNETT served a traffic ticket which he knew, or should have known,
4 that did not contain any physical description the driver, as required by Redflex and the Courts.

5 In the Redflex letter dated 2-7-2007 (**EXHIBIT A**, attached hereto) Mr. Rosenberg states
6 in paragraph 1:

7 “Redflex Traffic Systems (Redflex) obtains the majority of Vehicle Registration
8 and Drivers License information directly from the Motor Vehicle Department
9 (MVD) for the states that we operate in throughout the USA. This information is
10 typically obtained using a dedicated electronic interface and is used to populate
11 *the photo enforcement citation with the required information.*”

12 “In addition, Redflex has just partnered with NLETS to obtain real time MVD
13 information for all 50 States. Our strategic partnership with NLETS allows
14 Redflex Traffic Systems to get the most up-to-date and accurate information
15 available including name, address, *physical descriptive details*, plate expiration
16 date, etc. (*italics and emphasis added*)

17 On page 19 of 24 of the New Times article (**EXHIBIT C**) journalist Stern reports:

18 “At Redflex and other photo-enforcement companies, clerks use the license plate
19 in the photo to look up the address of the vehicle’s registered owner. But they
20 don’t have access to MVD photos, so no positive ID is made before a citation
21 is sent out.”

22 “There is no human involvement in the certification process whatsoever,”
23 Downie’s ruling states, adding that the procedure clearly violates Arizona law.

24 Since Mr. PICKRON is quoted frequently in the New Times article , it can be reasonably
25 inferred or presumed that he read the article in February 2007, to ensure that he was quoted
correctly. Based on the inference of that fact, Mr. PICKRON had notice that the traffic tickets
issued by Redflex, the company he had a verbal agreement or a contract with, were clearly being
issued in violation of State law (**A.R.S 28-1561**), as ruled by the Superior Court.

Upon his notification of the illegal traffic citations issued by Redflex, as reported in the
New Times article in which he was interviewed, Mr. PICKRON had a DUTY to ensure that all

1 Redflex traffic citations that his process servers were assigned to serve were legally sufficient,
 2 with positive ID of the driver made, as reflected by *a complete physical description of the driver*
 3 on the face of the ticket, a five-second examination. As President and owner of AAA PHOTO,
 4 “David Pickron, who *runs* AAA Photo Safety in Mesa...” and because “Pickron *hires* part-time
 5 process servers to deliver photo tickets for all six Valley cities that use the cameras”(page 3 of 24
 6 of **EXHIBIT C**), he had a DUTY to properly train and supervise his employees and independent
 7 contractors to identify properly certified traffic tickets, in order to comply with State law as
 8 officers of the court, and in order to avoid any civil liability for himself, his corporation and his
 9 employees.
 10

11 Corporate directors can be personally liable for torts committed by a corporation or an
 12 officer by virtue of their office if they “have knowledge amounting to acquiescence...” *Bischofs-*
 13 *hausen, Vasbinder, and Luckie v. D.W. Jaquays Mining and Equip. Contractors Co.*, 145 Ariz.
 14 204, 210-211, 700 P.2d 902, 908-09 (App. 1985) Under Arizona law, for a corporate director to
 15 be held personally liable, the directors or officers must participate or have knowledge amounting
 16 to acquiescence or be guilty of negligence in the management or supervision of the corporate
 17 affairs causing or contributing to the injury. *Bischofshausen*, 145 Ariz. at 210-11, 700 P.2d at
 18 908-09, cited in *Dawson v. Withycombe*, 216 Ariz. 84, 101, 163 P.3d 1034. A corporate director
 19 is personally liable for fraudulent representation of his own *or in which he participates*, even if
 20 in the furtherance of corporate business. *Albers v. Edelson Tech. Partners LP.*, 201 Ariz. 47, 52,
 21 31 P.3d 821, 826 (App. 2001)
 22

23 It is clear, from the traffic citation issued to the Plaintiff on 8-19-2008, that Mr.
 24 PICKRON failed to train CASEY ARNETT to identify a properly certified traffic ticket before
 25 serving it. *Even if* Mr. PICKRON did not assign Mr. ARNETT to serve the ticket to the Plaintiff,
 Mr. PICKRON had a DUTY to train the process server Dispatcher regarding valid traffic

1 citations, containing all the physical description of the driver. Mr. PICKRON has liability under
 2 the legal theories of agency, *respondeat superior*, failure to train, and failure to supervise his
 3 employees and independent contractors, which was a proximate cause for the Constitutional
 4 deprivations under color of state law. In both in his First Amended Complaint, now supplement-
 5 ed by the exhibits attached here to, Plaintiff has clearly and irrefutably stated a legal cause of
 6 action for 42 USC 1983, stated facts, and provided supporting evidence,.

8 Since the New Times article (**EXHIBIT C**) references AAA PHOTO process server
 9 Danny Arnett, it could be reasonably inferred or presumed by a jury, the trier of fact, that brother
 10 CASEY ARNETT was aware of the contents of that article, especially regarding the lack of legal
 11 sufficiency of traffic tickets that Redflex was systematically and routinely assigning to AAA
 12 PHOTO for service of process. Plaintiff's allegations in Paragraphs 201 through 208 and
 13 216 clearly state facts and a legal cause of action for civil conspiracy to violate 42 USC 1983.

14 **III. Defendants AAA PHOTO, ARNETT, and PICKRON had a DUTY to review every**
 15 **Traffic Complaint issued by Redflex, after having notice of their previous illegal citations.**

16 Based on the facts stated above about AAA PHOTO, ARNETT, and PICKRON having
 17 prior notice of both the legal requirements for a properly certified traffic ticket, and notice of
 18 Superior court rulings on the legal insufficiency of Redflex citations, those Defendants clearly
 19 had a DUTY to review every complaint that came through its office. Defendants' assertion on
 20 page 6, lines 13-16, that "Plaintiff's far fetched notion...would effectually shut down legal
 21 jurisprudence" is the pinnacle of hyperbole and a laughably ludicrous argument. Apparently the
 22 five- second procedure to examine line 5 of the Traffic Ticket, to see if the physical description
 23 of the driver is listed, would severely overburden and paralyze the officers of the court and
 24 hopelessly jam the cogs of the entire judicial machinery!!! Utter balderdash!!!!

1 As advertised on its website, **(EXHIBIT D)** AAA PHOTO only serves only ONE type of
2 complaint...Traffic Complaints, issued primarily by ONE client, Defendant Redflex. They do
3 not serve complaints for divorce, breach of contract, tort actions, family court, etc., but only
4 Traffic Tickets. Defendants' argument that court clerks would have to evaluate the merits of the
5 Complaint is specious. This issue is restricted exclusively to issuance of traffic citations, certified
6 by police officers, mailed by Redflex, and transmitted to courts electronically by Redflex.
7

8 The Superior courts have ruled consistently, that a falsely certified ticket, or a robo-
9 signed procedure with a computer signature, absent personal involvement and absent positive ID
10 of the driver is defective and confers no jurisdiction on the court. Yet, Redflex, Tempe Police,
11 Tempe City court and AAA PHOTO continue to ignore clearly established law, and then
12 complain that following the law "would effectively shut down legal jurisprudence". Defendants
13 have no basis to complain about being held accountable and personally liable for civil damages
14 when they demonstrate a pattern of violating clearly established law, in "deliberate indifference"
15 to the Constitutional rights of their "Perjury for Profit" victims.
16

17 As the U.S. Supreme Court has ruled "When an official could be expected to know that
18 certain conduct would violate statutory or constitutional rights, he should be made to hesitate,
19 and the person who suffers injury caused by such conduct may have a cause of action. *Harlow v.*
20 *Fitzgerald*, 457 U.S. 800, 819. Government officials performing discretionary functions, general-
21 ly are shielded from liability for civil damages *insofar as their conduct does not violate clearly*
22 *established statutory or constitutional rights of which a reasonable person would have known.*
23 See *Procunier v. Navarette*, 434 U.S. 555, 565 (1978); *Wood v. Strickland*, 420 U. S. at 322.
24

25 It seems apparent that Defendant AAA PHOTO is not really concerned about Plaintiff's
claims bringing legal jurisprudence to a halt. Rather, it is clearly concerned about the potential

1 halt of its “Perjury for Profit” scheme, obtaining money by false pretenses, through its Racket-
 2 eering activities of mail fraud, wire fraud, and extortion, by knowingly serving process of falsely
 3 certified traffic tickets, where there was no probable cause to issue the ticket, as shown by lack
 4 of positive ID and no physical description of the driver on line 5 of the ticket. See Paragraph 320
 5 of Plaintiff’s First Amended Complaint, which Defendants did not dispute in their motion to
 6 dismiss .

7 Defendants AAA PHOTO, ARNETT, and PICKRON are the “linchpin” of the entire
 8 RICO enterprise alleged in Plaintiff’s 2nd cause of action. Without service of Process, the court
 9 never acquires jurisdiction over the unsuspecting Defendants, who are railroaded into the “sham”
 10 legal proceeding, denied their right to a fair trial and due process of law, by judges trained with a
 11 Redflex CAM module to overcome any and all Defendants objections. (See **EXHIBIT O**, First
 12 Amended Complaint). From each paid citation, Redflex earns a portion, the court earns a portion,
 13 the Police Department earns a portion, and Defendants AAA PHOTO, PICKRON, and ARNETT
 14 earn a portion. Without service of process of the perjured traffic tickets, the whole “Perjury for
 15 Profit” scheme would otherwise fall apart. This is exactly the kind of lawless and corrupt activity
 16 that Congress intended to curb and penalize with the civil RICO statutes under **18 USC 1961 et**
 17 **seq.**

18
 19 **IV. Since a traffic court has been deemed an “enterprise” for RICO purposes, holding**
 20 **an officer of the court liable for civil RICO conspiracy is proper.**

21 The plain language of RICO defines an “enterprise” as including:

22 “any individual, partnership, corporation, association,
 23 *or other legal entity*, and any union or group of individuals
 24 associated in fact although not a legal entity”

25 **18 U.S.C. 1961(4)**

In *U.S. v. Vignola*, the court held that as a creature of statute, the Philadelphia Traffic
 Court is a “legal entity” and is therefore an “enterprise” for the purposes of RICO. In that case,

1 the defendant argued that Congress did not intend RICO to apply to the judiciary, and that in
 2 enacting RICO, was not concerned with corruption of that branch of government. The court in
 3 the *Vignola* case disagreed.

4 “This definition makes *no exception for public entities such as the judiciary*,
 5 Nor do we find any basis in the legislative history for implying one. Indeed,
 6 In adopting the 1970 Act, Congress expressed a particular concern for the
 7 subversion and corruption of “our democratic processes” and the undermining
 8 of the “general welfare of the Nation and its citizens” by “organized crime.”
 9 Congressional Statement of Findings and Purpose, Pub. L. No. 91-452,
 84 Stat. 923. (*italics added*)

10 See *U.S. v. Vignola* 464 F. Supp 1091, 1095. (1979).

11 By logical extension, if a traffic court can be an “enterprise” for purposes of civil RICO,
 12 then an officer of that court, i.e. a process server, can be a part of a RICO conspiracy, especially
 13 when he knowingly gives service of process of a perjured traffic citation, an” overt act” in the
 14 furtherance of that conspiracy to obtain money by false pretenses, i.e. “Perjury for Profit”.
 15 Consequently, Defendants’ argument that Plaintiff’s claims are “far-fetched” and “against public
 16 policy” is both ill-founded and ill-informed. Congress has specifically directed that RICO be
 17 “liberally construed to effectuate its remedial purposes...” Pub. L. No. 91-452, sec. 904, and the
 18 courts have recognized and given effect to that mandate. See *Vignola*, *supra*, at 1096.

19 Defendant AAA PHOTO receives its traffic citations from Redflex to serve the plead-
 20 ings, as it states on page 4, lines 16-17 of its Motion. The perjured traffic ticket was sent via the
 21 Internet, in an act of Wire Fraud. Use of the Internet to transmit images or data satisfies the
 22 interstate commerce element for Wire Fraud. Once user submits connection request to a website
 23 server or image is transmitted back to user, data has traveled in interstate commerce, given the
 24 nature of the Internet. See *U. S. v. MacEwan* 445 F3d 237 (3rd Cir. 2006)

25 **V. Plaintiff’s allegations in complaint against Defendants AAA PHOTO, PICKRON,
 And ARNETT are fully supported by case law.**

1 Plaintiff has shown in this response that his allegations against Defendants are fully
2 supported by case law, facts, and evidence. Plaintiff's **EXHIBIT C** shows that the above named
3 Defendants knew or should have known that Redflex was issuing traffic citations which the
4 Superior Court rejected on appeal for computerized signatures without human involvement.
5 The Maricopa County Superior Court rulings in *Gillespie* and *Palermo* (**Ex. E & F**) show that
6 Redflex custodian Bill Harper testified that the traffic tickets were issued without comparison of
7 the driver's license photo ID. The rulings of the Superior Court were clearly established law.
8 Plaintiff has cited the Supreme Court's ruling in *Harlow v. Fitzgerald* regarding civil liability for
9 knowing violations of clearly established law. Plaintiff has cited the court's ruling in *U.S. v.*
10 *Vignola*, holding that a civil Traffic Court is an "enterprise" for purposes of civil RICO.
11

12 It is significant that Defendants AAA PHOTO, PICKRON, and ARNETT do not cite
13 ANY case law in their motion to dismiss. And Defendants do no refute ANY specific paragraphs
14 in Plaintiff's complaint. Defendants' claim on page 7, lines 17-18, that Plaintiff's complaint is
15 "just absurd, overbroad, ostentatious, and reckless" has been unquestionably refuted by
16 Plaintiff's specific statements of facts, evidence, and case law presented herein. Defendant's
17 denial that "the process server has literally done nothing wrong" has been specifically contro-
18 verted with facts and case law. Mr. ARNETT's knowing and deliberate service of a traffic ticket
19 complaint which he knew or should have known contained no physical description on line 5 of
20 the ticket, was *a knowing and intentional act* in the furtherance of the conspiracy to obtain
21 money by false pretenses.
22

23 On page 8, lines 3-4 of Defendants' Motion to Dismiss asserts that "The merits of the
24 Complaint are not the process server's responsibility." Such argument misses the point... that
25 the complaint was *not properly issued*, as ruled over and over again by Arizona Courts, but
willfully ignored by the process server and his employer, with "deliberate indifference" to the

1 law. Mr. ARNETT knew that from reading the New Times article which referred to his brother's
 2 malfeasance, and Mr. PICKRON knew that the ticket issued to Plaintiff and most all Redflex
 3 tickets were not properly issued, based solely on a "gender match", which is unlawful.
 4

5 Mr. PICKRON knew of the pattern of illegally issued Redflex tickets, and yet failed to
 6 train or supervise his employees to simply look at line 5 of the Traffic Ticket (EXHIBIT M in
 7 Plaintiff's First Amended Complaint) to see if the Physical Description details were provided or
 8 not, before taking the risk of serving a perjured traffic ticket. The formula for verifying a valid
 9 traffic ticket is amazingly simple:

- 10 1) No physical description on line 5 of ticket = no positive ID of driver
- 11 2) No positive ID of driver = false certification of traffic ticket by officer (perjury)
- 12 3) No positive ID of driver = no jurisdiction of the Court
- 13 4) No jurisdiction of the court = no legal authority for process server to serve ticket
- 14 5) Knowingly serving a perjured ticket = liability for process server and AAA Photo
- 15 6) Notice to appear before Redflex trained judges = deprivation of Constitutional rights
- 16 7) Redflex + Tempe Police + AAA Photo + process server + judge = conspiracy

17 It doesn't take the brilliance of Sherlock Holmes to make this deduction from a simple
 18 syllogism of logic. If a Pro per Plaintiff can figure this formula out, then certainly the President
 19 of a Process Service Company, who also owns a private investigation company Crimeshield,
 20 should be able to figure this simple formula out, after FOUR YEARS in contract with Redflex,
 21 and after numerous court rulings consistently rejecting tickets based on only gender matches and
 22 computerized signatures. This 5-second verification procedure of properly issued tickets will
 23 NOT "effectively shut down legal jurisprudence." To the contrary, it will restore integrity to the
 24 Police Department and the Courts, which have been corrupted by a Racketeer Influenced Corrupt
 25

1 Organization, Redflex. engaged in a fraudulent scheme or artifice to obtain money by false
2 pretenses..."Perjury for Profit".

3 Plaintiff has cited the case of *Dawson v. Withycombe*, establishing liability of the
4 corporation and corporate officers, knowing there was an illegality on perjured tickets, but
5 failing to act to train process servers. The facts are clear, the evidence is clear, and the case law is
6 clear. Defendants' denials contain no factual dispute or case law, only postulative theories of law
7 with NO support whatsoever in any case law.

8 The law is clear in Arizona regarding moving violations. Arizona is a "driver responsi-
9 bility" State... Redflex knows that... DPS knows that...City of Tempe knows that... and Mr.
10 PICKRON knows that... and Mr. ARNETT knows that. Yet each of those entities and individ-
11 uals hope to circumvent the law, dupe Defendant drivers, and cash in on the ill-gotten profits,
12 hoping that they won't get caught, or won't get challenged on Appeal. But those entities
13 miscalculated with this Plaintiff, and they are now called to account for *their knowing and*
14 *deliberate violations of Constitutional rights and their RICO activities*, and their fraudulent
15 scheme to obtain money by false pretenses. Plaintiff's victory in the lower court on Appeal is
16 validation of the soundness of his legal arguments and facts. (See **EXHIBIT A**, First Amended
17 Complaint). Plaintiff has spent over two years studying this case, developing the facts, securing
18 the evidence, and researching at the law library for eight plus hours a day, 7 days a week, and his
19 claims are not made carelessly or recklessly.

20 Plaintiff's Complaint and exhibits clearly show the connection between the process
21 server, licensed by the Court, and the allegations and remedies of **42 USC 1983** and the
22 Fourteenth Amendment to the U.S. Constitution , **RICO** statutes, Mail Fraud, Wire Fraud,
23 Extortion and Conspiracy, all supported by well-established legal theories.

24 1. Proverbs 13:11 "Wealth gained by dishonesty will be diminished."

25 2. Proverbs 19:9: "A false witness will not go unpunished, and he who speaks lies shall perish."

VI. The RICO Conspiracy connections, Steps 1 through 7.

Plaintiff has alleged facts and provided evidence showing the conspiracy between Redflex, Tempe Police, AAA PHOTO, and process server, to obtain money by false pretenses.

1) Redflex photographs license plate, collects registration from MVD (ADOT), makes a gender match, and send notice of violation to Tempe Police for approval via Internet.(wire fraud)

2) Tempe Police Department knowingly issues false certifications of traffic tickets, accepting the violations with computerized signature, which are sent back to Redflex (WIRE FRAUD).

3) Redflex sends the falsely certified traffic tickets, based only on a gender match, as instructed in Redflex procedures manual, using the US Postal System to deliver the knowingly perjured tickets (Mail Fraud) in violation of Plaintiff's Fourth Amendment right to have no warrant issued except upon probable cause.

4) If Defendant ignores the mailed traffic citation, Redflex uses the Internet to notify AAA PHOTO safety to hire a process server to deliver the knowingly perjured Traffic Ticket to the Defendant (WIRE FRAUD).

5) The process server, who knows or should have known that a ticket issued without a physical description of the driver is illegal, then makes service of process of the perjured ticket, an "overt act: in the furtherance of the RICO conspiracy and 42 USC 1983 conspiracy.

6) The process server's overt act of service of process brings the Defendant into the traffic court for a "sham legal proceeding" where Defendant's Constitutional rights are violated by a Redflex-trained judge, who flips the burden of proof, and convicts Defendant without any evidence of the driver's identity. Percentage of convicted defendants who appeal is low.

7) Repeat steps 1 through 6....in a continuous pattern... until sued...then deny wrongdoing.

The entire connection of actors, "enterprises", racketeering activities, and conspiracies are clearly laid out visually in Plaintiff's **EXHIBIT T** (wheel theory of RICO conspiracy) and

1 **EXHIBIT U** (chain theory of conspiracy). See Exhibits T and U attached to his First Amended
 2 Complaint.
 3

4 **VII. Defendants' counsel should be sanctioned under Rule 11 and E.R. 3.5**

5 Rule 11, Signing of Pleadings, provides in part:

6 (a) The signature of an attorney or party constitutes a certificate by the
 7 signer that the signer has read the pleading, motion, or other paper:
 8 that to the best of the signer's knowledge, information, and belief
 9 formed after reasonable inquiry *it is well grounded in fact* and is
 10 \warranted by existing law or a good faith argument for the extension,
 11 modification, or reversal of existing law, and that *it is not interposed*
 12 *for any improper purpose, such as to harass or to cause unnecessary*
 13 *delay or needless increase in the cost of litigation.*

If a pleading, motion or other paper is signed in violation of the rule,
 the court, upon motion or upon its own initiative, shall impose upon
 the person who signed it, a represented party, or both, an appropriate
 sanction, which may include an order to pay to the other party or
 parties the amount of the reasonable expenses incurred because of the
 filing of the pleading, including a reasonable attorney's fee.

14 Defendants' Motion to Dismiss cites NO Memorandum of Points and Authorities relied
 15 upon in support of its motion, as required under LRCiv 7.2(b) Memorandum by the Moving
 16 Party. Defendants' cite *NO case law whatsoever* in its Motion. Defendants' Motion is therefore
 17 is not well grounded in fact or existing law, nor a good faith argument for extension, modifica-
 18 tion or reversal of existing law, as the Rule 11 requires. Therefore, it appears that *Defendants'*
 19 *motion is advanced to delay* filing an Answer, because he can't refute any specific paragraphs of
 20 Plaintiff's Complaint or any of the attached Exhibits. It also appears that Defendants' motion is
 21 intended to intimidate Plaintiff with threats of sanctions for Rule 11 violations, attorney fees and
 22 Costs. Plaintiff, as a Pro Per, is frankly shocked at the glaring lack of legal substance in the
 23 Defense counsel's Motion, which contains not an iota of case law to support it, nor a scintilla of
 24 evidence to refute Plaintiff's well grounded legal claims, facts, and evidence.
 25

Contrary to Defendants' assertion on page 8, lines 19-23, Plaintiff is not wasting judicial

1 economy, not motivated by spite or revenge, and has not abused the Court process in an attempt
 2 at malicious and frivolous prosecution. Plaintiff has made a clear statement of facts, case law,
 3 and evidence.

4 Finally, let the record show that although the Certificate of Service on Defendants'
 5 Motion states that a COPY of the foregoing was mailed to the Plaintiff on the 8th day of
 6 February, 2011, *as of Monday, Feb. 14th, 2011, Plaintiff has still not received a copy from*
 7 *Defendants' counsel.* Plaintiff only discovered the Motion to Dismiss by accident, while filing
 8 other documents at the Federal courthouse on Friday, Feb. 11. Plaintiff has experienced this
 9 unethical tactic previously from other attorneys, who hope to sabotage the Pro per's case by not
 10 mailing documents, so that the time to respond will expire before being given notice. Plaintiff
 11 hereby puts this Court on notice of Mr. Dobbins unethical tactics and requests the Court to
 12 admonish him from engaging in future unethical tactics and unfairness to opposing counsel, in
 13 violation of E.R. 3.5. Plaintiff will not tolerate devious tactics from an officer of the Court.

14 VIII. CONCLUSION

15 Plaintiff has met *all the legal elements to state a claim* for which relief can be granted.

16 1) Plaintiff suffered financial damage which were proximately caused by conspiracy to
 17 deny him of Constitutional rights under 42 USC 1983, civil RICO conspiracy under 18 USC
 18 1961 et. Seq., and action for damages due to a conspiracy, all "aided and abetted" by overt acts
 19 of Defendant ARNETT, and Mr. PICKRON's failure to act, failure to train, failure to properly
 20 supervise on behalf of AAA PHOTO, in "deliberate indifference" to Plaintiff's Constitutional
 21 Rights. (Plaintiff has standing to sue)

22 2) The above named Defendants' violation of Plaintiff's Constitutional rights were
 23 knowing, deliberate and intentional.
 24
 25

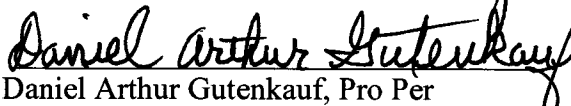
1 3) The acts of above named Defendants were done under color of State law, as officers
2 of the court, enforcing state traffic law **A.R.S. 28-701 A.** and **A.R.S. 41-1722.**

3 4) The above named Defendants were employed by an "enterprise" and participated in the
4 operation of an "enterprise" engaged in interstate commerce (transportation) and they knowingly
5 and willingly "aided and abetted" the fraudulent scheme or artifice to obtain money by false
6 pretenses, through a Pattern of Racketeering activity (Mail Fraud) (Wire Fraud) (Extortion)
7 with two or more acts within a period of 10 years, in a continuous and ongoing scheme of
8 "Perjury for Profit."
9

10 Plaintiff has clearly been damaged in both his property and his Constitutional rights, and
11 he has stated facts of fraud with particularity under Rule 9 (b), and has provided evidence to
12 support those facts. Plaintiff has stated a claim for which relief can be granted, for all three
13 alleged causes of action. Therefore, the Motion to Dismiss by Defendants AAA PHOTO,
14 DAVID PICKRON AND STEPHANIE PICKRON, and CASEY ARNETT should be denied as
15 a matter of law. The Plaintiff has not committed a violation of Rule 11, because his claims are
16 not frivolous, but are supported by existing clearly established law. The above named
17 Defendants should be ordered to file an Answer to the Complaint within the time specified by the
18 Court. Plaintiff requests oral argument on Defendants' Motion.
19

20 RESPECTFULLY SUBMITTED,

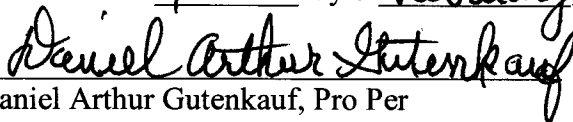
21 DATED this 15th day of February, 2011.

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

ATTESTATION

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

DATED this 15th day of February, 2011.



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

CERTIFICATE OF SERVICE

I, Daniel Gutenkauf, hereby certify that copies of the foregoing were served in the following manner:

ORIGINAL and One Copy of the foregoing
Filed this 15th day of February, 2011 with:

Clerk of the Court
United States District Court- District of Arizona
Sandra Day O'Connor Courthouse
401 W. Washington St.
Phoenix, AZ
85003

A copy of the foregoing mailed by U. S. Postal Service this 15th day of February, 2011 to

Nicole M. Goodwin, Attorney for Redflex Traffic Systems Defendants
Quarles & Brady LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004

A copy of the foregoing mailed by U.S. Postal Service this 15th day of February 2011 to

Clarence Matherson, Jr., Assistant City Attorney for City of Tempe Defendants
Tempe City Attorney's Office
21 E. Sixth Street, Suite 201
Tempe, AZ 85281

A copy of the foregoing mailed by U.S. Postal Service this 15th day of February 2011 to

Terrence E. Harrison, attorney for Defendants Goddard, Vanderpool, and Halikowski
Assistant Attorney General
1275 W. Washington
Phoenix, Arizona 85007-2926

A copy of the foregoing mailed by U.S. Postal Service this 15th day of February 2011 to

Law Offices of J.D. Dobbins PLLC, attorney for AAA Photo, Pickrons, and Arnett
4121 East Valley Auto Drive, Suite 116
Mesa, AZ 85206

DANIEL ARTHUR GUTENKAUF
1847 East Apache Boulevard, No. 41
Tempe, Arizona 85281
(480) 966-7018
dgutenkauf@getnet.net
Plaintiff, *in propria persona*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DANIEL ARTHUR GUTENKAUF,
an unmarried man

Plaintiff,

Vs.

THE CITY OF TEMPE, a municipal corporation and
body politic, et al.
Defendants.

)
)
) Civil Action No.
) 2:10-cv-02129-FJM
)
) PLAINTIFF'S AFFIDAVIT
) IN RESPONSE TO
) MOTION TO DISMISS BY
) DEFENDANTS AAA PHOTO
) SAFETY INC., PICKRON
) AND ARNETT

AFFIDAVIT OF DANIEL ARTHUR GUTENKAUF

STATE OF ARIZONA)

) ss

County of Maricopa)

Daniel Arthur Gutenkauf, being duly sworn, deposes and says:

1. I am the Plaintiff in Civil Action No. 2:10-cv-02129-FJM and I have personal knowledge of the facts set forth in this affidavit, and I solemnly affirm that the facts stated herein are true, correct and accurate, to the best of my ability at this time.
2. On Friday, February 11, 2011, I went to the Sandra Day O'Connor Federal Court house to file a Request for the Clerk to make an Entry of Default for Defendants Goddard, Vanderpool, and Halikowski, for failure to file an answer or otherwise defend within the 20 days since they were served with my First Amended Complaint.

3. After filing the Request for Entry of Default document, I checked the Docket entries for my case, Action No.2:10-cv-02129-FJM, to see if any new entries had been made.
4. I was surprised to see that a Motion to Dismiss had been filed with the Court by Mr. J.D. Dobbins, counsel for Defendants AAA Photo Safety Inc., David Pickron, Stephanie Pickron, and Casey Arnett.
5. The Motion to Dismiss is Dated this 8th day of February, 2011.
6. The last page of the Motion to Dismiss states that a copy of the foregoing was mailed this 8th day of February, 2011, to Daniel Arthur Gutenkauf at 1847 E. Apache Blvd. #41, Tempe, Arizona 85281.
7. When I returned home on the evening of 2-11-11, I checked my mail, to see if I had received a copy of the Defendants' Motion to Dismiss, but that document had not arrived.
8. On Saturday, February 12th, 2011, I checked my mail again, anticipating that the Motion to Dismiss would arrive, but it did not.
9. On Monday, February 14, 2011, I checked my mail again, but the Defendants' Motion to Dismiss had still not been delivered.
10. As of today's date, Tuesday, February 15, 2011, I have still not received in the mail a copy of the Motion to Dismiss that Mr. Dobbins alleged he mailed to me on February 8, 2011, one full week after that document was filed by him.
11. I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and ability at this time.

Daniel Arthur Gutenkauf
Daniel Arthur Gutenkauf, Plaintiff pro pet, affiant

Subscribed and sworn before me this 15 day of February, 2011

Scott Goodenough

Printed name, Notary Public

[Signature]

Signature, Notary Public

My Commission expires on 11/19/13



Exhibit A



Redflex Traffic Systems, Inc.
15020 N. 74th Street
Scottsdale, AZ 85260
Tel: 310 642 0470
Fax: 310 642 0142
www.redflex.com

February 7, 2007

City of Tempe
Procurement Office
20 E. Sixth Street, 2nd Floor
Tempe, AZ 85281

This letter is in response to the City of Tempe's request for clarification in response to RFP# 07-045 - Photo Enforcement Program. The following includes the question with the response as requested:

1. Please explain in detail how your firm will obtain vehicle owner registration information. What information will you provide Tempe Police from the Motor Vehicle Department?

Redflex Traffic Systems (Redflex) obtains the majority of Vehicle Registration and Drivers License information directly from the Motor Vehicle Department (MVD) for the states that we operate in throughout the USA. This information is typically obtained using a dedicated electronic interface and is used to populate the photo enforcement citation with the required information.

In addition, Redflex has just partnered with NLETS to obtain real time MVD information for all 50 States. Our strategic partnership with NLETS allows Redflex Traffic Systems to get the most up-to-date and accurate information available including name, address, physical descriptive details, plate expiration date, etc.

We have completed research with the NLETS technical team and have determined that it is technically feasible to receive a flag in the license plate lookup response file to alert Redflex of an expired or stolen plate. Redflex will work with the City of Tempe to develop an alert process to automatically notify the City of Tempe Police Department when this situation occurs.

2. Using the model of a vendor staffed vehicle, if a citizen contests a citation will the vehicle operator go to Court to provide States Evidence?

Redflex will provide Expert Witness testimony as requested by the City. Those individuals that provide expert witness testimony in court as needed to support the City of Tempe in their efforts to prosecute contested citations receive a much higher level of training to achieve their "expert" status.

Each expert witness works in each department for a period of time to understand the job functions for all Redflex processes, particularly as they relate to the custodian of records testimony. In addition, they ride-along with speed van



operators to learn the set-up and operation procedures of the speed vans. The Expert Witness receives radar certification training and accompanies our maintenance technicians to learn the procedures involved with maintenance. They also complete a much more technical review of the details of the equipment operation.

Our Redflex Expert Witnesses are very well-rounded in all aspects of our business and will offer excellent support to the City of Tempe to achieve the highest possible prosecution rates for the Photo Enforcement Program. When a request is received from a customer (or a subpoena from a court) for an Expert Witness for a trial, that trial date is scheduled in the Redflex Court Testimony Calendar and an Expert Witness is assigned to the trial. If the actual van driver who was driving the mobile unit at the time of the violation is specifically needed for a particular trial, Redflex will work with the City of Tempe to arrange for that representative to attend the trial.

3. The City has determined that the vendor will provide cameras at seven intersections with two approaches at each intersection. Please verify that you have taken this into consideration and included it in your costs.

Our pricing for the program allows for the installation of 14 systems (two approaches monitored at each of seven intersections).

4. Are your cameras able to calibrate externally with a tuning fork? If not, what is the method used for calibration?

The Mobile Speed Units use an external Electronic Tuning Fork (ETF) at the beginning of each deployment. If the ETF and the Radar do not agree, the radar system will not operate insuring that the system is working properly before each deployment. The Radar will not function if the system does not agree with the ETF. Both the ETF and the Radar units are calibrated annually by an independent lab in California. Our Mobile Speed Systems are accurate to plus or minus 1 mph.

5. Please provide specifics on the two mobile speed vehicles requested by the City. Include in your response the make, model and year of the vehicles and information on Redflex providing staffing for vehicles.

In recent deployments, Redflex has utilized 2007 Chevrolet Uplander vehicles as speed vans. We do have the flexibility to outfit other types of vehicles and would be happy to discuss alternatives with the City of Tempe if you desire to deploy a different type of vehicle.

6. Provide information on process serving for unpaid citations.

Redflex Traffic Systems has a long-standing relationship with AZ Photo Safety, to provide process serving for unpaid citations on behalf of our Arizona municipalities. Based on the criteria defined by the City regarding how many days past the date of citation issuance that a citation should be served; the Redflex system will check the disposition status received from the Tempe court. Any citations eligible for process service will be printed and provided to AZ Photo



Safety. An electronic file will also be transmitted to AZ Photo Safety to allow them to efficiently assign and dispatch their process servers to serve the defendants as quickly as possible. Upon successful service, AZ Photo Safety will provide completed affidavits on the details of the serve to the Tempe Court.

Two options are offered whereby the City of Tempe can contract directly with a Process Service Vendor of their choice and Redflex will build an electronic interface and a delivery process for the printed citations, or Redflex can retain the relationship with AZ Photo Safety and contract on behalf of the City to provide this service. In the second option, Redflex will pay AZ Photo Safety for the successful serves, and invoice the City of Tempe for the funds collected by the Court for the process service fee. This is a complete pass-through service and Redflex does not charge any additional fees for the Process Service, other than the actual cost paid to the Court by the defendant which is the exact amount charged by the Process Service agency.

7. Provide specific information on three stationary speed cameras (fixed radar sites and verify that they are included in your offer.

Pursuant to the requirements of the RFP, Redflex will provide three stationary speed cameras. Redflex has significant experience with fixed speed systems in operation across in Arizona, including a system in place in the City of Scottsdale and the Loop 101 project, where we successfully implemented our fixed speed solution in a very challenging environment. We can provide the City of Tempe with two options for deploying a fixed speed system: 1) a free-standing option utilizing our traditional camera housing, and 2) our Slimline system that offers a small footprint and can be attached to existing City infrastructure. Pricing for the fixed radar sites for speed enforcement will be the same as described on page 125 (12.2.a) of our proposal.

8. Provide specific information on speed on green at red light intersections and verify that this is included in your offer

Redflex has a number of "speed on green" systems in operation in the State of Arizona, including the communities of Paradise Valley, Prescott Valley and Scottsdale. In addition, Redflex recently completed a successful trial of this application in Chandler. Pricing for the "speed on green" application was addressed on page 125 (12.2.a) of our proposal.

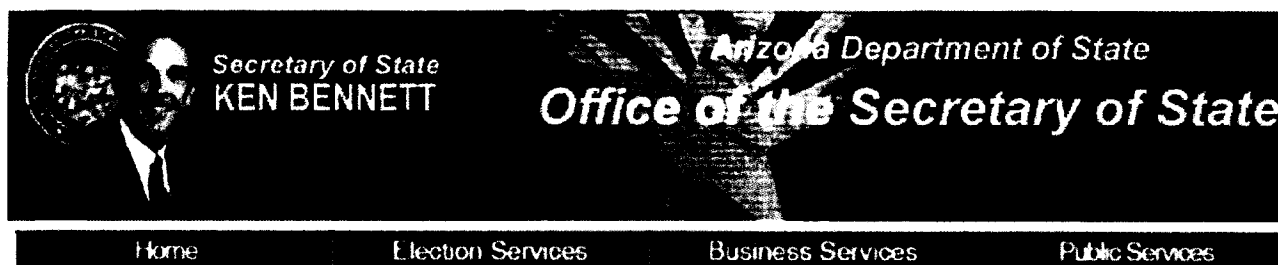
Please call me if the City has any additional questions or need further clarifications. I may be contacted via cell phone at (310) 213-6994 or my direct extension at (310) 743-1209. I may also be reached via e-mail at arosenberg@redflex.com.

Kind Regards,

A handwritten signature in black ink, appearing to read "Aaron Rosenberg", written over a horizontal line.

Aaron M. Rosenberg, PhD
Vice President, Redflex Traffic Systems

Exhibit B



Registered Name

Information Search

Generated by TrT Names Search Version 3.11

Instructions

General Information

File ID	264499
Description	Trade Name
Status	Active
Name	ARIZONA PHOTO SAFETY
Address 1	19 N ROBSON RD STE 101
City	MESA
State	AZ
ZIP	85211-
Phone	480-668-5953
Business Type	PROCESS SERVING
Domestic Begin Date	1/1/2002
Registered Date	2/26/2002

Agent/Owner Information

Agent ID	Type	Fullname	Address	City	State	ZIP	Phone
728133	Owner	AAA PHOTO SAFETY, INC	19 N ROBSON RD STE 101	MESA	AZ	85211-	480-668-5953

Registration Information

Received	Amended	Assigned	Expiration	Cancelled	Revoked
1/19/2007			2/26/2012		
2/26/2002			2/26/2007		

Correspondence History

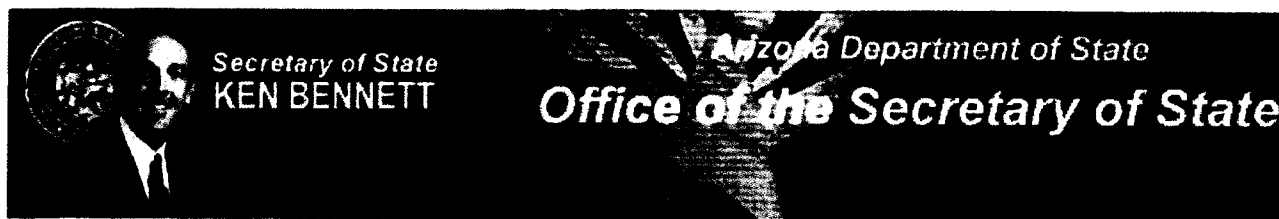
Description	Date	Printed	Filmed	Loc. No.	Page No.	Pages
Renewal	1/19/2007	1/26/2007 10:02:03 AM				1

Application	2/26/2002	3/4/2002 9:36:30 AM				1
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[Public Services](#)

Registered Name

Information Search

Generated by TnT Names Search Version 3.11

Instructions

Agent General Information

Agent ID	728133
Lastname	AAA PHOTO SAFETY, INC
Address 1	19 N ROBSON RD STE 101
City	MESA
State	AZ
ZIP	85211-
Phone	480-668-5953

Agent/Owner References

File ID	Type	Status	Name	Code	Begin	End
264499	Trade Name	Active	ARIZONA PHOTO SAFETY	OWNER	1/19/2007	

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Please email your comments or questions regarding this system to trades@azsos.gov. We appreciate any feedback.

Disclaimer

Exhibit C

CHEAPEST


CELL PHONE REPAIRS IN TOWN!

Gotcha!

Corporations and governments can legally ignore photo tickets in the Valley, while the rest of us are expected to pay up -- or else


By Ray Stern

published: February 08, 2007



Brooke works full-time and needs the **flexibility** of online classes.

Rio Salado College



The beginning of last year was hectic for Francesca Cisneros, an energetic young businesswoman who was heading up a new mortgage office in Phoenix. She was working 12-hour-plus days, zooming around town to

Mike Maas



Giulio Sciorio



Francesca Cisneros achieved infamy last year after getting 70 photo-

meetings with her phone earpiece under her long, dark hair and her Blackberry within arm's reach. Cisneros, 33, was a leadfoot in her 2002 Honda Civic. She wasn't reckless — she just had little respect for speed limits. She'd been pulled over once and received photo-enforcement notices in the mail for her speeding in the previous three years, but couldn't seem to break the habit.

And the mailed notices — she trashed them. And they went away.

Three were from Scottsdale; one was from Chandler, where she lived. Mailing a citation to a traffic violator doesn't make it stick in Arizona. Unless a process server delivers it personally, city courts must dismiss the ignored ticket within four months. All four of Cisneros' photo tickets were dismissed this way.

Early 2006 was also an exciting time for the City of Scottsdale, which grabbed national attention for installing speed-enforcement cameras on the Loop 101 freeway in a highly publicized nine-month test program. Six cameras

enforcement tickets.

Laura Segall



Redflex Traffic Systems processes photo tickets in this nameless north Scottsdale building.

Laura Segall



David Pickron runs a process-serving company that delivers photo-enforcement tickets.

courtesy of Susan Kayler



Attorney and author Susan Kayler believes photo enforcement violates the rights of drivers.

Laura Segall



After Phoenix accountant Al Golusin filed a complaint, a court revoked the license of a local process server.

Laura Segall



Phoenix attorney Craig Gillespie beat a photo-enforcement ticket on a

were installed on an eight-mile stretch of the freeway between the 90th Street and Scottsdale Road exits. The city gave speeders a one-month grace period, but warned that as of February 22, anyone caught going more than 10 miles per hour over the 65 mph speed limit would be mailed a citation.

Cisneros paid about as much attention to the new cameras as she had the old ones. Her first recorded violation on the 101 came March 5 at 10:11 a.m., for going 81. Over the next three months, the photo-enforcement system was like a strobe light on Cisneros, flashing her almost every other day as she flitted around town.

Flurries of tickets began arriving in her mailbox. Cisneros stopped checking her mail. And when the box got too stuffed, she got a note saying all her mail was now getting collected at the post office.

She was pegged for 14 violations in March, then nine in April. May was her biggest month, with 33. The cameras caught her speeding four times a day on three days that month. Most of the speeding occurred between 10 a.m. and noon, and between 7 and 9 p.m., when the freeway is less crowded. She eased back during the summer, drawing 14 violations in June and two in July.

The total came to 70 speeding violations for 2006, with 64 on the freeway. Her highest freeway speed was 86 mph. She also got one camera ticket for running a red light.

"There are rules for a reason, I understand that," Cisneros says of photo enforcement. "But it's such an annoying nuisance. The whole thing is about money."

In mid-August, the state Motor Vehicle Division suspended her driver's license. And the police came looking for her one day at her mortgage office when she wasn't there. When she called the number on the card they left, a detective asked her to come down to the station to talk. She did — and was promptly thrown in the clink.

Phoenix attorney Craig Gillespie beat a photo-enforcement ticket on a technicality.



A Mesa judge suspended the fine of Mesa City Councilman Mike Whalen's October red-light camera ticket.

Subject(s):
Photo speed enforcement

clink.

"Like a jackass idiot I went down there without a lawyer," she says.

She was released two days later after promising to appear for her court date.

The number of tickets set a record in Scottsdale, and Cisneros was suddenly all over TV news and the Internet, complete with her mournful mug shot.

A plea deal with prosecutors put her in Scottsdale's city jail again, for another five days. Her driving privileges were restricted, and she was ordered to pay more than \$10,000 in fines.

Cisneros, who has a bachelor's degree in marketing, complains that she was devastated by the way the media made her look so foolish. She says she turned down interview requests from *Inside Edition* and CNN.

"It was horrible — the most embarrassing thing ever," she recalls.

Much of the media's focus then was on how ridiculous it was for anyone to think they could ignore photo tickets.

"She threw them away because she thought nothing would happen to her," KPHO-TV's Jason Barry told his audience on August 11. "She was wrong."

Actually, Cisneros had the right idea — she just took it to an extreme, and she didn't fully understand the game.

Throwing away the tickets works only until the process server shows up. Once the process server delivers the tickets, that's it — they have to be dealt with.

David Pickron, who runs AAA Photo Safety in Mesa, says Cisneros "wasn't cooperatively served," but she was served. Pickron hires part-time process servers to deliver photo tickets for all six Valley cities that use the cameras. His employees knew Cisneros was trying to evade them when they would show up at her door with five or six tickets in hand.

He says one server caught sight of her through a sliding glass door and started banging on it, yelling that he was an officer of the court.

"She ran out of the room" and didn't answer the door, Pickron says.

That was all the process server needed to legally drop off the paperwork at her door.

Had she taken more care to avoid the servers, her story might have turned out differently.

On the other hand, had Cisneros been driving a corporate vehicle — if her car had been registered to her mortgage company, for example — there would have been no story.

No process servers would have come. No court date would have been assigned.

Cisneros would have skated like Wolf & Associates did. The Phoenix law firm triggered 18 photo violations in Scottsdale in the first nine months of 2006. One Loop 101 violation was for going 97 mph.

Repeated calls to the firm for comment were unreturned.

Scottsdale records show that Wolf & Associates, which advertises that it defends people charged in auto accidents and with DUIs, never responded to violation notices. It's not like the firm has a large fleet, either: The MVD says five vehicles are registered to the company.

So while one speeder goes to jail and faces public scorn and ridicule for ignoring multiple tickets, a big law firm does the same thing with no consequence.

The photo-enforcement system is like a bad cop.

It's like a bigot on crystal meth — a sleepless, unfair lawman who ignores certain types of drivers as it punishes others.

And it's multiplying. Six Valley cities now use speed or red light cameras: Phoenix, Mesa, Scottsdale, Tempe, Chandler, and Paradise Valley. Glendale and other Arizona cities are considering them.

Because of the Loop 101 program, photo enforcement has been huge news lately in Arizona. Governor Janet Napolitano lauded the program last month and suggested that cameras be installed on other stretches of state highways.

On January 30, the Scottsdale City Council voted to reactivate the Loop 101 system. The cameras are slated to start flashing again on February 22.

Authorities insist the public must respect these badgeless auto-police.

You're supposed to pay your ticket promptly when the photograph clearly shows it's you in the driver's seat. If someone else was driving, you're supposed to tattle on that person — wife, daughter, best friend, trusted employee, whomever.

Then again, photo enforcement doesn't play fair — so why should you ?

Screw the machines.

Savvy motorists have long known that ignoring a ticket can be effective in beating it, and numbers show this is no urban myth. More than 25 percent of the 90,520 people issued photo citations on Loop 101 in Scottsdale last year had their cases dismissed this way.

Knowing the system is the key. Once you do, you can choose what's right for you: opening your wallet with a resigned sigh, or taking countermeasures.

Sure, there are ethical considerations in playing cat-and-mouse with the process server or in putting a glare-producing shield over your license plate. But when the system lets tens of thousands of corporate vehicle drivers get away with speeding and running red lights at all times, it's easy to forget about personal ethics when it comes to photo tickets.

You see, vehicles registered to a corporation, limited liability corporation (also known as an LLC), limited partnership, or family trust are immune to photo tickets. So are public entities like city governments (though some do occasionally pay tickets received from other jurisdictions).

Here's why: The police and courts may send process servers to visit the home of someone who blew off a mailed ticket. But they don't do the same thing for businesses.

Lawyers say Arizona civil traffic violations can only be issued to a real, live person. Since the corporation can't be held liable, there's no reason to serve it the ticket.

Most cities don't send *real* citations to corporations. They send weakly worded notices that can be safely thrown in the trash. Unlike the grim tone of

a citation, which orders the motorist to pay a fine or appear in court on a certain date, the violation notices let the company know up front: "This is not a Summons to Appear. There is no fine associated with this Notice."

The notices sent to businesses gently ask them to identify the driver and mail the form back so a new ticket can be reissued in the driver's name. No law forces anyone to do that, however.

Scottsdale's been mailing such notices for years; Mesa and Phoenix started sending them last year. Tempe sends businesses a letter instead of a citation.

Police do nothing when the notices are disregarded. Granted, police could choose to investigate repeat offenders like Wolf & Associates — but they've never done so.

The process is slightly different in Chandler and Paradise Valley, which sends all violators, regardless of the name of the registered owner, a citation. The result is the same, though. Corporations, trusts and government entities that blow off the notices are not held accountable.

Officer Jed Gunter, Chandler's photo-enforcement manager, receives a daily list of violators who ignored their mailed tickets. He asks the court to sic process servers on most of them. But not all.

"If there are any corporations, I just go ahead and X them out, because you can't serve a corporation," he says.

Asked why Chandler never tries to catch repeat corporate offenders, Gunter replies, "I've never thought about it."

Mailing the businesses toothless notices, rather than citations, saves work for police and courts. The reason is, citations, unlike notices, are filed with the court just before being mailed.

If a business ignores a citation, it must be dismissed after four months, like other ignored citations. And if the business identifies the driver, the original corporate citation still must be dismissed from the court. Therefore, court employees have fewer cases to deal with when corporate citations are never filed with the court at all.

After *New Times* told Elsa Lynch, Paradise Valley's court administrator and part-time judge, how most cities handle corporate violators, Lynch took steps to change the town's photo-enforcement system.

By separating people who *could* be prosecuted for camera violations from businesses that can't, the court will save time and money, she says.

"I think this is a fantastic idea," says Lynch.

For businesses, trusts and governments, everything about photo enforcement is voluntary.

No surprise, then, that most don't respond to the mailings.

During Scottsdale's highly publicized Loop 101 speed camera test program, which ran from February to October 2006, more than 12,000 notices of violation to corporations, governments and trusts were never acknowledged.

But the city uses speed vans, intersection speed cameras and red-light cameras, too. In the first nine months of 2006, Scottsdale mailed 31,831 notices to business and government entities. About 57 percent never became citations.

A detailed review of the violation data provided to *New Times* following a public records request showed that cities, Indian tribes, school districts, and federal and state government departments were among the ranks of those that ignored violation notices from Scottsdale.

The cities of Phoenix, Tempe and Mesa — which use photo enforcement to nail drivers in their cities — each failed to respond to two or more notices mailed by Scottsdale. Chandler responded to one notice and blew off another. While some of these were police cars, most were city fleet vehicles.

In other words, cities will hire process servers to track you down if you don't pay their photo tickets. But if Phoenix, Tempe or Mesa get a ticket from another city, they won't necessarily pay it.

Some businesses do sometimes tell police who was driving the vehicle in question. They may not realize the violation notice has no legal weight, or they may want to hold their employees accountable for driving problems. Yet most of these companies fail to respond to at least as many notices as they mail back, either out of apathy or because the notices get lost in bureaucratic red tape.

The same holds true for certain government agencies. The state Department of Administration responded to only three of 19 violations. The state Department of Economic Security let only five of 16 notices get turned into

citations.

Liz Barker, a spokeswoman for DES, says the agency hadn't realized its system of identifying speeding drivers was so inefficient until *New Times* called. The notices apparently weren't notice enough.

Barker said officials would fix the process by putting one person in charge of making sure everyone who got a photo ticket was held accountable.

Rental car companies made up the largest single class of corporate violators in the records. Enterprise identified more than 2,000 of its drivers to authorities. Hertz, on the other hand, managed to identify only seven drivers out of 4,787 who drew violation notices.

Records from Mesa, Chandler and Paradise Valley on corporate violators show similar trends:

- Most companies identify either all drivers or none. In some cases, a company might identify one driver out of a dozen or more with violations — perhaps because that employee simply wasn't liked by the boss.
- Most companies that don't respond to the notices are local.
- Companies that ignore the notices are more likely to have multiple speeding violations.

Contractors, dog groomers, churches, housekeepers, limo drivers, medical services, ice cream and pizza shops — the companies that trashed their photo-enforcement notices are as varied as the business world itself.

New Times' records search also turned up hundreds of family trusts among the notices; the majority did not identify the photographed driver to authorities.

Perhaps businesses have a legitimate need to speed at times — maybe that's the case with AAA Africanized Bee Removal, a Tucson company caught doing 79 on the Loop 101. Privately owned ambulances, like fire trucks, can speed legally in emergencies.

Many companies likely handle the violations internally, and police say they are satisfied if a scolding from a supervisor, rather than a ticket, gets a driver to slow his speed.

But what's unjust is that corporations and public entities have total freedom to choose how to handle photo enforcement — and you, the ordinary citizen, don't.

During the Loop 101 program, about 20,000 of the non-servable notices were sent to vehicle owners whose physical descriptions, as kept by MVD, did not closely resemble the drivers in the violation photographs. Less than a quarter of those turned into citations.

And speaking of the actual citations, 10,000 were dismissed after vehicle owners proved they *weren't* the drivers.

So for the 101 freeway test program, which ended in late October, about 48,000 people paid their fines or went to defensive driving school. And about 59,000 drivers got out of their tickets.

To join that majority, you could form a corporation, LLC, limited partnership, or family trust, then re-register your vehicle to it. It doesn't cost any extra at the MVD, and you get a regular, non-commercial-looking plate.

(Note: MVD won't do the same thing for a simple registered trade name or sole-proprietor business. Without the right paperwork, the vehicle's owner is classified as an individual — and individuals can be prosecuted for traffic citations.)

The Arizona Corporation Commission has made it easy to form an LLC without a lawyer (though you may want to consult one). The filing fee is \$50, and publishing your articles of incorporation may set you back another \$50. With freeway speeding tickets starting at \$162, it might be money well spent. Check out the details at www.azcc.gov.

If the LLC is owned only by you, the IRS won't require you to file a separate tax return for it. And as long as the LLC vehicle is for personal use only, it shouldn't cost any more to insure, either.

Even if the corporation shares your name ("John Doe, LLC"), don't worry — the photo ticket still goes in the corporate pile.

The easiest way to play the registration game is to put your car under your spouse's name, and vice versa. Drive grandpa's car, or anyone's car but your own.

That is, make the auto-cop's bias work for you.

Or you could be damned skillful at avoiding the process server.

On most days that it's open, the modest Paradise Valley courthouse on Invergordon Road bustles with activity, 80 percent of which is related to photo enforcement.

The small town of immense wealth and hardly any commercial property bills itself as the first in the country to mate cameras, computers and radar on the roads. It's a great way to catch speeders among the tens of thousands of commuters going to or from neighboring Phoenix each day.

Elsa Lynch, who's an easygoing, non-lawyerly judge with pictures of the Rolling Stones and Bob Dylan hanging in her office, says she heard a few years back that her court was the seventh busiest in the state thanks to photo enforcement. The town has only 13,000 residents.

But flaws in the photo machines surfaced two years after the program began in 1988. The town had been sending tickets by registered mail, believing that would suffice as legal service under the law. That changed after a speeder who didn't sign or acknowledge his ticket won an appeals case in which he argued that putting a summons in the mail doesn't count as service.

Since then, cities have been forced to employ process servers who are bound by court rules. Typically, process-serving companies like AAA Photo Safety contract through a private photo-enforcement company such as Redflex Traffic Systems in Scottsdale, which is employed by Scottsdale, Chandler and Paradise Valley.

The way the program generally works is that once a violation is recorded, the private company collects the electronic data, including the photographs.

At Redflex's nondescript office, workers in black cubicles view the photos and determine whether the picture of the driver and license plate is good enough to use. If so, they forward the information to police and mail out either a civil traffic citation or the above-mentioned notices of violation, depending on the situation.

Police pass copies of the citations (not the notices) to the courts, and the clock starts ticking. Arizona law requires that once a civil case has been filed with a court, proper notice must be given to the defendant within 120 days. If not, the case must be dismissed.

"The court has no jurisdiction until it's served," Lynch says.

Although the dismissal is considered "without prejudice," meaning it can be re-filed, judges and court administrators say that no 120-day dismissal in a photo-enforcement case has ever been reintroduced.

The 120-day dismissal is the Holy Grail for those seeking to get out of a ticket.

Once those four months are gone, neither courts nor police take any further action. Many courts, including Scottsdale's, have search engines on the Arizona Supreme Court's public Web site that allow people to find out whether their ticket has reached this phase (www.supreme.state.az.us/publicaccess/notification/default.asp.)

The time will pass slowly.

Motorists usually get their copy of the citation a week or two after the court receives and files it. Some cities send a second notice after a month, if the first one goes unanswered.

The citation tells people to sign a waiver of process service. But why waive your right to anything? Let them come if that's what they want to do. The rules of the court say that people have a duty to avoid the cost of process service — but the only cost is to the defendant. (If the server nabs you, you'll pay the extra fee of about \$25.)

At this point, the game boils down to a simple bet: If you win, you don't pay a thing. If you lose, you only pay slightly more money than you would have had to pay anyway. For instance, a red light ticket in Mesa would cost \$210 (plus a special eight-hour driving school that costs another \$60 or so), instead of \$185 and the school.

The process servers don't get the full four months to hunt you down, but the time may vary between cities. In Mesa, the court date on the summons will be about 75 days after the violation date, and the court will waste 30 or 45 days hoping you'll mail back that waiver. That leaves the servers about a month before the court date. If they don't catch you by then, you should be okay.

In Scottsdale, the court date will be less than a month after you receive the ticket. A process server will be assigned to the case about a month after that court date, with a new court date yet another month away. In that case, you can probably start relaxing about three months after you got the ticket.

Again, verify your case on the above Web site as often as you like — doing so will neither tip the police off to your game nor count as proper service.

Process servers are supposed to follow rules.

They are not allowed to simply leave the citation on your doorstep while no one is home. The law says it must be given to either the defendant or a "person of suitable age" (usually interpreted as 14 or older) who also lives at the home. Provisions are made for uncooperative people like Cisneros, but AAA Photo Safety's Pickron said such cases are rare.

"They all have a story and a plan and a game, so when we come to that door, we are at a high disadvantage," he says. "We have to weed through all of the stories, all the garbage, to see if we can leave the ticket or not."

The server tries to make the best decision, knowing that a judge may review the service in court. If the vehicle in the photo is in the driveway and the server can see the defendant through a window, Pickron says, that's good enough. But if the server is looking for a man, he says, and a woman is behind the window but not answering the door, that isn't good enough — because the server can't establish who she is or whether she lives there.

"We don't think everybody's avoiding service," Pickron says. "But then there are times when all the lights are turned on at the house and the garage door's open — but all of a sudden the house goes completely black."

Yet there's no reason for the process server to risk his license by leaving the ticket even in that case, Pickron says. The server would move on to the next house in the area, and come back later.

Process servers work part-time, since their quarry is more often home in the evenings and on weekends.

Pickron says servers only go out to the address that matches the vehicle registration, and if that address is no good, they don't bother to do additional research.

Records show that dozens of photo-ticket defendants only have a post-office box listed on their vehicle registration. While MVD allows auto owners to put a P.O. box as their mailing address, the agency also requires a physical address.

But Pickron and police say the MVD doesn't always put the physical address

on the registration. So that's another thing a ticket-evader can try — give the MVD a P.O. box, if there is one. It will probably reduce the odds of service.

All this said, being hunted isn't for everyone, nor is it always possible to put a plan in practice for avoiding service — particularly if you have roommates or a house full of teenagers. Somebody's bound to open the door at the wrong time.

But a reasonable strategy might be to go out more with friends and ask your spouse or live-in not to answer the door unless he or she knows the person knocking. (Not bad advice under any circumstance.)

Some people have lifestyles that make the game a breeze.

"If you're an airline pilot, and you're always out of town, you might get away with it," Pickron says.

One thing to consider is that the process server might cheat. Instead of following the law, he or she might throw the ticket at your doorstep while you're away. Quite possibly, a motorist playing the non-response game would not realize that had happened until after the MVD suspended his driver's license for ignoring service.

But just because you're bending the rules doesn't mean you have to let the process server do it. You can fight back.

Two years ago, Scottsdale resident Sherri Zanoft won her photo-ticket case on appeal after she proved she was on a plane to Costa Rica at the same moment a process server claimed he had handed her a ticket.

Such cheating doesn't happen very often. When it does, the public can file a complaint with the Maricopa County Superior Court. Presiding Judge Anna Baca reviews the complaints. If she decides they're valid, she'll schedule a hearing to find out what happened.

From a photo-enforcement point of view, this means that someone trying to avoid a ticket might get the person trying to serve it fired.

That's what happened last year after one of Pickron's servers went out to the house of Phoenix accountant Al Golusin to deliver a Scottsdale ticket.

Golusin was a bit cagey, even when *New Times* asked whether he'd received the initial mailing.

"Well, I don't know, maybe I did," he says. "But I can't remember receiving a letter or anything along that line. But if I had, I probably would have disregarded it because of my understanding of the law. I figured I'd just wait for the process server. That was my attitude. I was waiting for the process server."

The server paid a visit at 10:30 a.m. on New Year's Day.

Golusin and his wife, Marla, were at the gym working out. Their friend from Nevada, John Shebanow, was in town for the holidays and had spent the night at their home.

"He was a little hung over," Golusin says with a laugh.

After the Golusins came home, Shebanow told them a man in a white shirt and tie showed up and began ringing the doorbell repeatedly. When Shebanow peered out through the blinds, the man became frustrated and started banging on the door, shouting, "Albert, I know you're in there!"

Shebanow didn't open up, and the man shoved some papers halfway under the front door. When Golusin saw it was his ticket, he called the court to complain he had been served improperly.

When he requested a copy of the affidavit of service from the court, Golusin saw the process server had sworn that he'd left the ticket with an adult female who lives at the house:

"After knocking she came to the window and looked out but refused to open the door after seeing me and stating my purpose. I secured the papers to the door," wrote server Danny Arnett.

Arnett listed the person he served as a Caucasian female about 56 years old, about five foot seven, and weighing 135 pounds. Shebanow was 38 and had a full beard.

As Golusin noted in his testimony at the hearing — which Arnett never showed up for — Arnett's description closely matched the details listed on Marla Golusin's driver's license. The implication was that Arnett wrote whatever he thought it would take to make his affidavit meet legal requirements, knowing that what he was stating was false.

Baca ruled that Arnett had violated court rules, and his license was later revoked. Court staff members say only one or two complaints about process servers come in each month. That figure rose slightly during the Loop 101 program, but most of the extra complaints were about Arnett, court staff says.

Arnett, a Gilbert resident, says that's not true. Other process servers have received far more complaints than he has, he says.

If the affidavit says a woman peeked out of the window of Golusin's house, that's what happened, and Golusin is a liar, Arnett says. Asked how he could have established that the woman, if that's who he saw, was a resident of the home, Arnett replies, "Here's how: Obviously people are very childish and try to hide between windows and doors and try to hide behind kids."

Ironically, given his former line of work, Arnett says he didn't attend the hearing because he wasn't notified properly — he says he never received the letter telling him the hearing date.

"The judge violated my civil rights," Arnett says. "The judge said it was certified mail, but was never able to produce a signature."

Golusin, for all his troubles, still had to pay his ticket.

"I went to the trial," he says. "I said, 'I don't think I should even be here.' [The judge] said, 'The person in the photo looks like you, and I think you should be here.' I said, 'Irrespective of that, I wasn't legally served. He said 'We're not going to talk about that today.'"

They didn't. Case closed.

"Unfortunately, it wasn't really worth my time and money to file an appeal," he says.

Whether or not a city judge gives you a fair shake on the question of proper service, filing a legitimate complaint against a process server is a good way to strike back at the photo-enforcement system.

Keeping process servers honest means more people will legally evade their tickets.

The best way to beat a photo ticket is not to get it in the first place.

Always drive less than 11 mph over the posted speed limit.

In school zones, don't exceed 15 mph.

Don't run red lights.

But if those precautions don't work out and you feel the warm touch of a traffic-camera flash, the citation may never come.

About half the violations recorded by photo-enforcement systems can't be used at all because of sun glare, focus problems, and other technical glitches. The system doesn't do well with big rigs, since the cameras are set up to frame the license plates of normal-size vehicles. Mexican license plate? No problema, amigo. The photo-enforcement company doesn't waste postage on such tickets.

The trick is to find your way into this rejected pile because of factors you can control.

For instance, motorcycle helmets don't just protect your brain in a crash — a good helmet makes face identification almost impossible.

Drivers have been photographed wearing masks while mooning or flipping off the camera at high speeds. Those pictures are forwarded to police, who may investigate repeat cases.

The most popular defensive tactic against traffic cameras (besides registering a vehicle to a corporation) is the clear or translucent license plate shield that has exploded in popularity in the last couple of years.

Then there's Photoblocker. Joe Scott of Phantom Plate in Virginia says his company has sold more than 500,000 cans of the clear spray that is supposed to reflect the light of a camera flash like a mirror, making the license plate unreadable. The company also sells plastic shields that purport to do the same thing.

A Denver TV news crew did a spot on the spray and other products a few years ago with the cooperation of the police department, which set up a speed van on a closed track. If the newscast is to be believed (see it at www.phantomplate.com), the product worked as advertised.

Commander John Lamb of the Denver Police Department, however, says the experiment was hardly scientific. If the police had done a test, Lamb says, "it

would be much more effective than some Fox 31 bimbo driving through the thing."

He admits the spray did put glare on the plate, as the newscast shows. But he still thinks it's a rip-off.

At \$30 a can, he might be right. For sure, none of the companies that sell these products guarantees you won't get a ticket.

"A can of [lacquer] would do the same thing," Lamb says.

Phoenix police say they put a few of the products through the wringer in an unpublicized test about four years ago, after the city had installed its first red-light cameras, and neither the shield nor the spray worked.

A perfect test of the shield and spray under real-world conditions would have to involve the photo-enforcement companies. If the vendors have conducted such tests and know the products work, they aren't saying.

What is certain is that they attract unwanted police attention on the road. The sprays are invisible, but the shields could make a vehicle's license plate illegible to live police, which is a ticketable offense in Arizona.

Public records show that police in cities with traffic cameras do occasionally stop and cite motorists for having an obscured license plate. A cop who doesn't appreciate what the shield is for may pull you over because of it.

That happened twice to one local Corvette driver, who used a type of shield that allows the plate numbers to be read only when directly behind the vehicle. (A bill now before the state legislature aims to outlaw such shields.) The driver, who did not wish to be named for this article, says she's positive the shield kept her from getting tickets on Loop 101.

But the second time she was stopped, the officer took pictures of the plastic shield for evidence and wrote her a \$90 ticket.

"So I took it off," she says. "And lo and behold, on the frickin' 101, I got a \$188 ticket."

Soon after your photo ticket comes in the mail, or possibly before, you'll get an advertisement from Joe Geremia of Angelfire Enterprises, who wants to

charge you \$65 for advice he says will help you beat the rap.

A few years ago, Geremia won a court ruling that forced cities to hand over the names and addresses of all ticket-getters. He's not making millions off his paid advice — he lives in a Glendale mobile home — but he says he makes a profit.

Geremia's info is accurate, but the "product" is grossly overpriced. Responding to the come-on gets you four printed pages containing Geremia's feelings about photo enforcement and instruction to hide from the process servers, who come in the evenings and weekends.

You already know that now. You just saved \$65.

One source of good information, though, is a book by Scottsdale attorney Susan Kayler called *Smile for the Speed Camera: Photo Radar Exposed!*

Assuming you've tried everything but still got served and have a court date, you may find Kayler's book and Web site (www.photoradarlaw.com) of special interest. They give detailed instructions on various defenses to use at your hearing. For example, most posted speed limits are soft in Arizona, giving motorists the privilege to drive at "reasonable and prudent" speeds.

Although judges usually consider anything over the speed limit unreasonable, since speed limits are based on traffic-engineering studies of what the road can safely handle, people frequently squeak out of tickets with this argument. If the road is not crowded, no kids are playing on the sidewalk and it isn't raining, the judge might have mercy on you.

Losing the hearing means you can't take defensive driving school to avoid penalty points on your license. But the odds of losing aren't as bad as you might think. In a recent six-month period in Paradise Valley, the court found 142 defendants responsible in photo cases, while another 184 were either found not responsible or had their cases dismissed at the hearing. Nine more people were found responsible but didn't have to pay fines.

Some cases are thrown out at the hearing before the judge gets involved because the motorist convinces the state's witness (a police officer or an employee of the photo-enforcement company) that there is no case.

Lenny Montanaro, Mesa's court administrator, says he's seen red-light camera pictures that captured a microsecond when both the yellow and the

red lights were glowing at the same time. Although the police may push those violations through the system, he says, they are dismissed "in a split second" when the motorist shows the picture on the hearing day.

The lesson: Take a good look at the photo before paying the fine.

As with all things legal, you'll stand a better chance with a good lawyer by your side.

No one knows that better than a lawyer, which is why Phoenix attorney Craig Gillespie decided to ask Susan Kayler for help after he got zapped. In October 2005, the pair persuaded Maricopa Superior Court Judge Margaret Downie to toss Gillespie's ticket on a technicality.

Their argument hinged on the fact that citations are issued before any connection is made between the driver and the owner of the vehicle. State law requires an officer to certify there are "reasonable grounds" to believe the person listed on the ticket committed the infraction. But with a photo ticket, the officer's signature is a computer-generated image. The officer is real, but he or she had nothing to do with policing the violation.

At Redflex and other photo-enforcement companies, clerks use the license plate in the photo to look up the address of the vehicle's registered owner. But they don't have access to MVD photos, so no positive ID is made before a citation is sent out.

"There is no human involvement in the certification process whatsoever," Downie's ruling states, adding that the procedure clearly violates Arizona law.

While this seems like a bombshell that could overturn the whole photo-enforcement system, the appeal involved the facts of one case and is not considered a precedent-setter by the city courts.

Scottsdale prosecutor Caron Close says that well before the Gillespie case, Redflex clerks compared basic MVD information about a person — like gender, height, weight and hair color. They didn't always note for the legal record that such a comparison was made, though, and that's where prosecutors ran into trouble, she says. They've since corrected that problem.

Still, none of the cities compares the person in the violation photo with a driver's license photo before the citation is issued.

In Chandler, for instance, Officer Gunter says he makes no comparison at all.

If the person and license plate are clearly pictured, he'll have the citation sent out. The vehicle owner, if he was not the driver, then must sort it all out.

Gillespie and Kayler believe it's possible to win more appeals based on the "no human involvement" premise. If the company can't establish how it tried to link the vehicle and driver, "it's the exact same argument, and a winner," Gillespie says.

The message here is that if you are willing to pay a lawyer to appeal your case — and you can get it heard by a judge like Downie, considered soft on photo enforcement — you could get your violation dismissed. But how many of us have the time and money to go all the way over a \$185 ticket?

An appeal isn't always necessary. Even drivers with no real excuse and no defense *can* beat the ticket, or at least get its impact mitigated, at a city court hearing.

After Mesa City Councilman Mike Whalen got flashed while running a red light at Stapley and University drives in October, he chose to fight the system. The first thing he did, though, was to promptly mail in the waiver of his right to service.

"It would have been embarrassing to get served at a City Council meeting," he says.

His explanation to the judge at a recent hearing was that he thought he was already in the intersection when the light turned red, so he kept on going. He blames a "little old man" in a car in front of him who slowed down.

Whalen, a former police officer and assistant police chief in Mesa until 1999, knows how the camera system works. If the magnetic sensors under the road detect your vehicle past the imaginary curb-corner-to-curb-corner intersection lines as much as a millisecond after the light turns red, the camera flashes. He knew it was probably a valid violation.

Whalen says an officer he knew told him, "'You're toast on this — sure you don't want to go to defensive driving school?' I said, 'No, you know, I'm going to roll the dice.' So I rolled the dice, and I lost."

Yes, and no. Whalen was ordered to attend Traffic Survival School, an excruciating ultra-basic driving class for losers who get red-light tickets and DUIs. But the judge suspended his fine of \$185.

Whalen says he doesn't think the judge gave him any special treatment. "I don't even think he knew who I was," he says.

Mesa issued another red-light camera ticket in the last few months to former Arizona U.S. Attorney Mel McDonald. He rolled the dice with a hearing at roughly the same time as Whalen, though he had no defense.

"I went because I wanted to make sure the equipment was operable and tested and everything else," McDonald says, which means he was looking to beat the charge on a technicality. "It's my own policy that I will never, without a hearing, just walk in and write them a check. I want to challenge them."

McDonald lost. He's appealing his case in Superior Court.

Traffic cameras slow vehicles down. Researchers say they reduce serious injury crashes.

A draft report to Scottsdale by Simon Washington, an Arizona State University professor, states that the eight-month Loop 101 speed camera program slowed average speeds from about 74 to 64 mph. When the cameras shut down in late October, the number of motorists going faster than 76 mph jumped from 130 to 1,260 per day, per camera, as measured by pavement sensors.

Washington's report states that rear-end collisions increased on the affected section of freeway during the program, but that the number of crashes overall — and, most important, their severity — appears to have decreased.

Though he concluded that more research must be done, city and state officials seized on the report as evidence that photo enforcement should be expanded, leading to the January 30 vote in Scottsdale to turn Loop 101 cameras back on.

Washington's final report is expected this spring.

Larry Talley, a traffic studies analyst for Mesa, says he saw similar positive trends in crashes when he checked into the effectiveness of red-light cameras, which are more accepted by the public in polls than speed cameras.

But the question of safety is different from that of credibility, which could be

taken into account when deciding whether to exploit the weaknesses of photo enforcement.

The fact that red-light cameras may make Mesa roads safer sure didn't stop Councilman Whalen from fighting his ticket.

Besides, less legally painful methods make roads safer, too. Talley says installing left-turn arrows makes major intersections far safer than putting in red-light cameras.

Then there's the profit angle, in which cities are damned if they do and damned if they don't. Scottsdale earned \$800,000 from the Loop 101 program, mostly from ticketing people going less than 80 mph. The city expects to earn hundreds of thousands more in the coming months. Speeders weighing their options with a ticket might consider why they'd want to help enrich a wealthy city like Scottsdale. On the other hand, Mesa lost \$200,000 on its program in 2005. Could that money have been better spent elsewhere?

Meanwhile, the photo-enforcement companies and the state, which taxes the fines cities make off all traffic tickets, make money even when the cities don't. The 2006 nine-month freeway program alone earned \$2.3 million for Arizona in such taxes. The companies' cut of the tickets is a quarter or more of the fine.

Why not adopt the attitude of state police, who see Loop 101 speed cameras as major annoyances?

Before Scottsdale activated its Loop 101 test program, city officials pondered what to do about the violations by law enforcement vehicles that inevitably would be recorded. The Maricopa County Sheriff's Office and Arizona Department of Public Safety didn't want to see the violations, city officials say, so Scottsdale honored that wish.

The deal allowed patrol cars to speed freely when speeding was justified for their work — and also when it was not.

Police vehicles draw only the same toothless violation notices that corporations receive, and could eighty-six them just as easily. But the deal to ignore notices struck at the heart of the system's credibility. While municipal police routinely hold their own officers accountable for photo violations, checking call logs and making them explain their actions, the DPS and the Sheriff's Office seemed to be saying, "Do as I say, not as I do."

Sheriff Joe Arpaio denied he was part of any deal, while the DPS remained mum on the question.

Once Scottsdale began forwarding the violation notices to the DPS, the agency felt compelled to investigate each one to make sure officers had a valid reason for speeding. But it didn't mean they had to like it.

DPS Commander Tom Woodward says patrolmen found the Loop 101 cameras onerous. He said they may have put the public's safety at risk.

"It deterred officers assigned to the East Valley from working that area," Woodward says. "We still responded to calls, but officers were not in that area working traffic proactively as much as they were prior to photo enforcement."

To recap: Corporations don't have to pay. Family trusts don't have to pay. Cities that use photo enforcement ignore photo tickets from other cities. Lawyers and former police officers contest valid tickets just to see if the judge will let them off. State police are willing to put public safety at risk because it's so demoralizing to explain why they were speeding.

But if you, the ordinary schmo, get caught by the cameras, you're supposed to bend over and take it.

To make the system more even-handed, lawmakers could make vehicle owners liable for the tickets rather than drivers, as with parking tickets.

Denver went this route a few years ago, eliminating penalty points and lowering fines to make its program more palatable to the public. The Denver PD's Commander Lamb says lawmakers in his state gutted photo enforcement out of concern for the Big-Brotherly nature of the system. Now, it's an on-your-honor program, he says. If people don't pay their tickets, no one cares.

Arizona lawmakers debated a similar system a few years ago, but insurance companies lobbied against it, saying they needed to know whether their customers were driving poorly and getting tickets.

This "vehicle liability" method has its own drawbacks — a big one is that some people would be punished for violations they didn't commit. But it would be fairer to everyone.

Whether the Arizona Legislature will or even could close all the loopholes

remains an open question. But when two Republican lawmakers heard from *New Times* that responding to notices was voluntary for corporations, they took notice.

"It is clear that there are enforcement issues that need to be addressed," says state Senate president Tim Bee. "That should be a priority before we hurry to expand it statewide."

State Representative Kirk Adams, who is sponsoring a bill this year that would allow motorists who get photo tickets to take defensive driving school more often, says he had no idea corporations have such a choice.

"It's certainly something I want to look into," says Adams, a Mesa Republican. "It makes a case for a police officer on the streets writing tickets as opposed to cameras [doing it]."


Photo enforcement, as it now stands, seems only likely to increase. Mesa is boosting the number of intersections with red-light cameras. Scottsdale's freeway program is cranking back up. Napolitano wants the cameras on other state highways.

More motorists than ever will be getting tickets.

And more corporations than ever will smugly disregard their notices.

Flash! What are you going to do?

Exhibit D



AAA PHOTO SAFETY

AAA Photo Safety, Inc. is the premier photo enforcement company in the State of Arizona. Our use of customized programs meets the specific needs of each government entity with whom we contract. Trained process servers ensure that our Officers of the Court are respectful when serving process. Our professional team and proprietary software system allow AAA Photo Safety to handle thousands of serves every month. Our successful serves have allowed cities to successfully collect fines and create profitable photo safety programs.

AAA Photo Safety believes if our clients find success, we will be successful. Let our experience, integrity, and value help you achieve your goals.

HOME :: CONTACT :: CAREERS :: SERVER LOG-IN

Exhibit E

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000597-001 DT

10/21/2005

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 10/25/2005

STATE OF ARIZONA

CARON L CLOSE

v.

CRAIG CAMERON GILLESPIE (001)

SUSAN J KAYLER

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Case No. PR200500555

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

The underlying facts are not in dispute. On December 28, 2004, Appellant Craig Gillespie was photographed by a photo radar machine as he traveled down Osborn Road at 40 mph. The posted speed limit was 25 mph. Appellant was mailed a computer-generated complaint alleging that he violated A.R.S. § 28-701(A) – driving at a speed greater than is reasonable and prudent. In the trial court, Appellant moved to dismiss the citation for lack of jurisdiction. His motion was denied. The trial court thereafter found Appellant responsible and imposed a fine. Appellant, having filed a timely notice of appeal, now brings the matter before this court.

Appellant first contends that because the traffic complaint was issued with only a computer-generated signature of a person who had no information concerning his name, the identity of the driver, or the alleged facts, it did not comport with A.R.S. § 28-1561(A). That provision states:

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

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10/21/2005

have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law."

While the complaint at issue does include the certification *language* required by the statute, our appellate courts have imposed restrictions on the use of computer-generated certifications:

While *Barckley* does suggest that a "pen-and-ink" signature may be superfluous, it is only in circumstances where some human involvement in the certification process can be inferred from the face of the document. Where, as here, the record is barren of facts from which we may infer that the intent to certify is contemporaneous with and unique to the production of the specific record and is independent of computer control, additional foundation is required to establish the requisite "human involvement".... [emphasis added]

State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

In the matter before this court, the certifier/complainant, Bill Harper, testified that he does not see the complaint before the computer signs it, and that no one compares the photo on the photo radar record with the photo on the putative defendant's driver's license. Harper stated that he does not compare the photos unless he is preparing for trial and that the only time the prosecutor's office will procure the driver's license photo for him to make a comparison is when an attorney has filed a notice of appearance. Harper further testified that in non-attorney trials, a defendant's driver's license photo is not obtained at all.

Under this system, no one can certify with the slightest degree of accuracy or truthfulness that the person receiving the ticket is the actual driver. There is no human involvement in the certification process whatsoever. The procedure clearly violates A.R.S. § 28-1561. As such, the traffic complaint entered in this matter failed to confer jurisdiction on the trial court. Appellant's motion to dismiss should have been granted.

Based on this finding, the court need not address the other issues raised by Appellant.

IT IS ORDERED reversing the finding of responsibility and the fine imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with directions to dismiss the traffic complaint against Appellant.

Exhibit F

SUPERIOR COURT OF ARIZONA
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06/15/2006

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 06/19/2006

STATE OF ARIZONA

CARON L CLOSE

v.

STEPHEN THOMAS PALERMO IV (001)

STEPHEN THOMAS PALERMO IV
4720 E CLEARWATER
PARADISE VALLEY AZ 85253

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

REMAND FOR DISMISSAL

Lower Court Case No. PR200528211

The Superior 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.

On May 29, 2005, a photo radar installment photographed a vehicle owned by Appellant Stephen Thomas Palermo IV traveling at a speed of 65 mph in a zone marked 45 mph, in violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). A civil traffic hearing was held in Scottsdale City Court, and Appellant was found responsible for the charge. He thereafter filed a timely notice of appeal on October 28, 2005.

Appellant raises several issues on appeal. However, one argument is dispositive. The record reflects that the Complaint was not properly certified. As such, jurisdiction was not conferred on the trial court.

A.R.S. § 28-1561 states:

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

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06/15/2006

have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law."

While the complaint at issue does contain the certification *language* required by the statute, Arizona's appellate courts have imposed restrictions on the use of computer-generated certifications:

While *Barckley* does suggest that a "pen-and-ink" signature may be superfluous, it is only in circumstances where some human involvement in the certification process can be inferred from the face of the document. Where, as here, the record is barren of facts from which we may infer that the intent to certify is contemporaneous with and unique to the production of the specific record and is independent of computer control, additional foundation is required to establish the requisite "human involvement"....

State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

In the case at bar, the certifier/complainant, Bill Harper, testified that he did not see the complaint before the computer signed it and that no one compared the photo from the photo radar camera with the photo on Appellant's driver's license. Harper testified, however, that he compared the photo-radar photo with Appellant's face when he walked into trial. Harper further testified that a Redflex¹ employee simply enters the offending vehicle's registration information obtained from the MVD into the system then prints the complaint with the computer-generated signature.

Under the system described by Harper, no one can certify with the slightest degree of accuracy or truthfulness that the person receiving the ticket is the actual driver. There is no human involvement in the certification process. The procedure clearly violated A.R.S. § 28-1561. As such, the traffic complaint failed to confer jurisdiction on the trial court. Based on this finding, the court does not reach Appellant's other contentions.

IT IS ORDERED reversing the finding of responsibility and the fine imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with directions to dismiss the traffic citation at issue.

¹ The company that operates the digital photo enforcement system for the Scottsdale Police Department.
Docket Code 511 Form L000