

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**JAMES W. HOEKSTRA and)
KARA L. HOEKSTRA)**

Plaintiffs,)

v.)

Case No. 4:08 CV-267

**CITY OF ARNOLD, MISSOURI,)
a Municipal Corporation,)**

JURY TRIAL DEMANDED

and)

**AMERICAN TRAFFIC SOLUTIONS,)
INC., a Kansas Corporation,)**

and)

**MARK POWELL, individually and in his)
official capacity as Mayor of the City of)
Arnold, Missouri,)**

and)

**PAUL VINSON, WILLIAM A.)
MORITZ, PHIL AMATO,)
ALFRED EMS, RANDY CRISLER)
JOHN BRAZEAL, JOYCE DECKMAN,)
and CLAUDE COOLEY)**

individually and in their)
official capacities as members of the)
Arnold City Council,)

and)

ROBERT T. SHOCKEY, individually)
and in his official capacity as Chief of)
Police of the City of Arnold,)
))
and)
))
STEVE MUSIAL, in his official capacity)
as a police officer for the City of Arnold,)
Missouri,)
))
Defendants.)

COMPLAINT

COMES NOW Plaintiffs James W. Hoekstra and Kara L. Hoekstra, by and through their undersigned attorneys, and for their Complaint state:

STATEMENT OF CLAIMS & PARTIES

1. Plaintiffs’ Complaint consists of eight counts as follows: RICO claim against all of the Defendants (Count I), RICO Conspiracy claim against all of the Defendants (Count II), § 1983 due process claim against all of the Defendants (Count III), § 1983 substantive due process claim against all of the Defendants (Count IV), § 1983 civil rights conspiracy claim against all of the Defendants (Count V), § 1983 failure to train, supervise, instruct and/or control claim against Defendants City of Arnold, Mark Powell, Paul Vinson, William A. Moritz, Phil Amato, Alfred Ems, and Robert T. Shockey (Count VI), state law abuse of process claim against all Defendants (Count VII), and state law civil conspiracy claim against all Defendants (Count VIII).

2. Plaintiffs James W. Hoekstra and Kara L. Hoekstra (hereinafter “Plaintiffs”) are citizens and residents of St. Louis County, State of Missouri, within the geographical boundaries of the Eastern Division of this Court.

3. Defendant City of Arnold (hereinafter “City”) is a municipal corporation of the third class located in the County of Jefferson, State of Missouri, within the geographical boundaries of the Eastern Division of this Court.

4. Defendant American Traffic Solutions, Inc., (hereinafter “ATS”) is a Kansas corporation, registered to do business in the State of Missouri and doing business within the geographical boundaries of the Eastern Division of this Court and performed its actions relevant to this complaint pursuant to authority delegated by the the City of Arnold.

5. Defendant Mark Powell (hereinafter “Powell”) is the Mayor of Defendant City. Defendant Powell is a citizen and resident of the Eastern District of Missouri. He is sued in both his official and individual capacities.

6. Defendants Paul Vinson, Randy Crisler, William A. Moritz, John Brazeal, Phil Amato, Joyce Deckman, Claude Cooley and Alfred Ems are the members of the City Council of Defendant City. They are all citizens and residents of the Eastern District of Missouri. They are sued in both their official and individual capacities.

7. Defendant Robert T. Shockey (hereinafter “Shockey”) is the Chief of Police of the City of Arnold. Defendant Shockey is a citizen and resident of the Eastern District of Missouri. He is sued in both his official and individual capacities.

8. Defendant Steve Musial (hereinafter “Musial”) is a police officer employed by and acting on behalf of the City of Arnold, State of Missouri, and at all times relevant to this complaint was acting in his official capacity. He is sued in his official capacity only.

9. At all times herein relevant, the Defendants and each of them were acting under color of state law.

10. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988, and 18 U.S.C.

§§ 1962 and 1964, as well as the Fifth and Fourteenth Amendment to the United States Constitution. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331. Plaintiffs further invokes that supplemental jurisdiction of this Court to hear and decide claims arising under state law. 28 U.S.C. § 1367.

11. Plaintiffs demand a trial by jury pursuant to Fed.R.Civ.P. 38(b).

FACTUAL ALLEGATIONS

12. On or before July 1, 2006, Defendants City and ATS entered into an agreement for ATS to install “red light cameras” at one or more intersections with the City of Arnold.

13. On information an belief, that agreement was signed by Defendant Powell, in his official capacity as Mayor of the City or at his direction by an employee of the City.

14. On information and belief, the Agreement required ATS to install a “red light camera system” which included cameras, triggering devices and other equipment required to photograph alleged traffic violations at certain intersections.

15. On information and belief, the Agreement further required ATS to provide to the City reports including two photographs of each vehicle which is alleged to have committed traffic violations at those certain intersections.

16. On information and belief, the Agreement specifically forbids recording the image of the occupants, including the driver, of the vehicle.

17. On information and belief, the Agreement requires ATS to make available to the City an internet payment site designed to accept payments by credit card for alleged traffic violations identified by the red light camera system.

18. On July 27, 2006 the City approved Bill No. 2176 and enacted into law Ordinance No. 2.2. The ordinance appears in Article V, Division 2 of the City of Arnold Code as §§ 23-

181- 23.187 and hereinafter is collectively referred to as the “Red Light Camera Ordinance.” A true and correct copy of these sections is attached hereto and made a part hereof as Exhibit 1.

19. Section 23.181 of Exhibit 1 defines an Automated red light enforcement system as a system that:

- (1) Consists of a camera and vehicle sensor or sensors, installed to work in conjunction with an electrically operated traffic control signal; and
- (2) Is capable of producing exactly two high resolution color digital recorded images that show:
 - (1) the traffic control signal while it is emitting a steady red signal;
 - (2) the offending vehicle; and (3) the license plate of the offending vehicle. All three of these elements are required in a single recorded image from the same camera unit which captured each of the two images. One of the images must be of sufficient resolution to clearly show all three (3) elements in either the first image captured immediately prior to the violation, or in the second image captured sequentially after the first image, and while the vehicle is in the intersection while the traffic signal is emitting a steady red signal.
- (3) **No recorded images will be taken of the occupants of the vehicle.**

emphasis added.

20. Section 23.183 states:

- (a) If the city proves:
 - (1) That a motor vehicle was being operated or used;
 - (2) That the operation or use of the motor vehicle was in violation of section 23-173; and
 - (3) That the defendant is the owner of the motor vehicle, then:
- (b) **A rebuttable presumption exists that the owner of a motor vehicle operated or used in violation of this division was the driver of the vehicle at the time and place the violation was captured by a recorded image.**

emphasis added.

21. Section 23.184 states:

- (a) The department is responsible for the enforcement and administration of this division.
- (b) Except as provided in subsection (g) of this section, upon review of a recorded image capturing a violation of section 23-173, **a police officer of the department shall complete a violation notice, commonly known as Form 37A, Uniform Citation, as described in Missouri Supreme Court Rule 37,** and shall forward the completed violation notice to the municipal prosecutor not later than sixty (60) days after the date the recorded image was captured.

(1) Pursuant to section 23-183 of this division, and based upon the information obtained from the recorded image, the police officer may obtain any additional information about the owner, which is necessary to complete the violation notice, from the records of the Missouri Department of Revenue or any other legal means; or, if the motor vehicle is registered in another state or country, from the motor vehicle registration records of the department or agency of the other state or country analogous to the Missouri Department of Revenue or any other legal means.

(2) If there is more than one owner of the motor vehicle, the violation notice will be addressed to the primary owner or the first-listed owner if there is no primary owner.

(c) **If the municipal prosecutor, on his or her information and belief, concludes that a violation of section 23-173 was committed, the prosecutor shall complete the appropriate section of the violation notice to create an information or complaint that charges the owner with the commission of a violation of section 23-173 and shall file the information or complaint with the municipal court,** subject to the requirements of Missouri Supreme Court Rule 37.

(d) Upon the filing of the information or complaint in the municipal court, the court clerk shall issue a summons pursuant to Missouri Supreme Court Rules 37.42 through 37.44. Not later than thirty (30) days after the date the violation is alleged to have occurred, the court clerk shall serve the summons on the owner by mailing it, together with:

(1) A copy of the violation notice;

(2) A copy of the recorded image(s) of the offending vehicle, which forms the basis of the information; and

(3) A copy of the supplemental violation notice, to the owner's last known address by first class mail.

(e) The supplemental violation notice shall contain, at a minimum, the following information:

(1) A statement that the recorded image will be submitted as evidence in the municipal court proceeding for prosecution of the violation of section 23-173;

(2) A statement that, **if at the time of the violation, the motor vehicle was being operated by a person other than the owner, the owner may transfer responsibility for the violation to the person who was in possession and control of the motor vehicle at that time and place,** if the owner, or the owner's representative where the owner is not a natural person, submits to the city by affidavit, on a form provided by the city, or under oath at the municipal court proceeding, the name and current address of the person:

a. Having possession and control of the vehicle at the time and place of the violation;

b. Who was the lessee of the vehicle at the time of the violation, if the vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time; or

c. Who was the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation.

(f) A violation notice and summons mailed under this division is presumed to have been received by the owner on the fifth (5th) day after the date the violation notice is mailed.

(g) In lieu of issuing a violation notice and summons, the department may mail to the owner a warning notice, on a form created by the department.

emphasis added.

22. Sec. 23-187 states that:

[t]he penalty (fine) imposed for a finding of guilt for a violation of section 23-173 using an automated red light enforcement system under this division shall be the same as the penalty (fine) for a finding of guilt for a violation of section 23-173 where an automated red light enforcement system was not used. **Except that no points will be assigned to the violators drivers license when guilty of an automated red light enforcement violation.**

emphasis added.

23. On or about August 15, 2007, Plaintiffs received a “Notice of Violation” from the Arnold Police Department Photo Enforcement Division containing three images of a vehicle, a uniform citation and a demand that Plaintiffs pay the sum of \$94.50 to the City of Arnold. A true and correct copy of the Notice of Violation is attached hereto and made a part hereof as Exhibit 2.

24. The “Notice of Violation” was sent by U.S. mail from the Arnold Police Department, Photo Enforcement Division, 2101 Jeffco Blvd., Arnold, Missouri 63010 to James W. and Kara L. Hoekstra at 1466 Pajaro Ct., Fenton, Missouri 63026.

25. According to the information contained on the Notice of Violation, Officer Steve Musial, Badge No. 59, determined under penalty of perjury that he had probable cause to believe that James W. and Kara L. Hoekstra, unlawfully operate a 2005 Jeep by failing to stop at a red

light in Violation of Bill No. 2102, said violation allegedly occurring at the intersection of Northbound Missouri Route 141 and Astra Way Drive, on July 29, 2007 at 3:07 p.m.

26. On Information and belief, Defendant Shockey or someone acting at his direction, affixed the electronic signature of City Prosecutor Paul D'Agrosa, thereby charging Plaintiffs with a criminal violation of a City of Arnold Ordinance.

27. Sec. 1-16. City of Arnold, Ordinance states:

Whenever in the Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore, the violation of any such provision of this Code or ordinance shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both.

28. As a result of being charged with this criminal violation, Plaintiffs, and each of them, were subject to a substantial fine and potential incarceration.

29. In addition to the information set out above, the Notice contained information on how to pay the violation using the payment web site set up and maintained by ATS or by making payment in another manner, as well as a form purported to be and "Affidavit of Non-Responsibility" to be forwarded to ATS in the event that the person(s) named on the Notice of Violation contested whether they were driving the vehicle at the time of the alleged violation.

30. The structure of the ordinance passed by City of Arnold places to burden on Plaintiffs to request a hearing to dispute the "Notice of Violation" to prove his innocence or to sign an Affidavit of Non-Responsibility.

31. On information and belief, so long as the penalty (fine) is paid, no points are assigned to the driver's license of the alleged violator.

32. Section 302.302.1 R.S.Mo. provides that:

The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points **shall be assessed** only after a conviction or forfeiture of collateral. This initial point value is as follows:

(1) Any **moving violation** of a state law or county or municipal or federal traffic ordinance or regulation not listed in this section, other than a violation of vehicle equipment provisions or a court-ordered supervision as provided in section 302.303 2 points. (emphasis added) shall be assessed two (2) points.

A copy of § 302.302.1 is attached hereto and incorporated herein as Exhibit 3.

33. On information and belief, the Agreement between the City and ATS requires that a pro rata share of each violation collected be paid to or retained by ATS without limitation based on the cost of equipment, the value of the services provided by ATS, or any other quantitative measure.

34. After receiving the Notice of Violation at issue herein, Plaintiff James Hoekstra directed correspondence to the Court confirming that his case had been continued to October 29, 2007. This correspondence further stated:

In the meantime, I was wondering if I should get a lawyer because I heard that these video red light tickets are illegal. I really don't have a lot of money to spend on a lawyer and would appreciate any advice you could give me.

A copy of this correspondence is attached hereto and incorporated herein as Exhibit 4.

35. The City of Arnold responded by issuing a Summons to Defendant James Hoekstra, advising him that if he failed to appear on October 29, 2007, a warrant would be issued for his arrest. A copy of this Summons is attached hereto and incorporated by reference as Exhibit 5.

36. Thereafter, Attorney Kevin Slaten entered his appearance in this matter on behalf of Plaintiffs, demanding a trial.

37. After Plaintiff Jim Hoekstra requested a trial through his attorney, the City

dismissed the red light camera charge against him. The charge was also dismissed against Plaintiff, Kara L. Hoekstra. On information and belief, whenever an alleged violator's attorney demands a trial, the alleged violation is dismissed.

COUNT I

18 U.S.C.A, § 1964(c) – RICO VIOLATION

38. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraphs 1 through 37 as though fully set forth herein.

39. Defendants and each of them committed multiple illegal acts affecting interstate commerce in aid of a racketeering enterprise, as defined in 18 U.S.C. § 1952 and/or 1961, in that:

- a. Defendants used the internet and the mail, in interstate commerce, with the intent to conduct the unlawful activity of extortion and/or fraud;
- b. Defendants committed and continue to commit the unlawful activity of extortion and/or fraud by illegally obtaining or attempting to obtain money from Plaintiffs and others similarly situated under the color of law;
- c. Defendants committed the unlawful activity of extortion and/or fraud by collecting an unlawful fine;
- d. The City of Arnold's enforcement system and its attendant fines are unlawful, to wit:
 1. It conflicts with R.S.Mo. § 302.302 by guaranteeing that no points will be assessed for the moving violation if the required fine is paid;
 2. It involves the issuance of probable cause statements by police officers, which if false, subject the officer to criminal punishment; though by virtue of the language of the ordinance cannot be known to be truthful;

3. It invokes the process of the State of Missouri without the existence of probable cause by requiring the clerk of the municipal court to issues a summons to appear in court without the existence of probable cause;
4. It requires alleged violators to prove their innocence rather than requiring the City to prove the existence of guilt by Plaintiffs and others similarly situated.
5. It requires alleged violators to prove their innocence or face potential incarceration.
6. It threatens that an arrest warrant will be issued if the ticket is not resolved, knowing that if a trial is requested that the case will be dismissed since actual criminal culpability cannot be proven on the evidence generated by the Red Light Camera System.

40. The Defendants have also committed the illegal act of mail fraud, as defined by 18 U.S.C. § 1341, in that in order to attempt to collect the illegal fines resulting from the red light camera system Defendants placed in the post office and/or an authorized depository for mail the “Notice of Violation” to be sent or delivered by the Postal Service.

- a. In Plaintiffs case the Notice of Violation was placed in the U.S. mail on or about August 13, 2007 by Officer Musial and/or another agent of the City of Arnold.
- b. Defendants City, Mayor, Council, and ATS participated in this scheme by developing and enacting the scheme to defraud Plaintiffs and/other similarly situated motor vehicles owners, who are all victims of this scheme.
- c. Defendant Shockey participated in this scheme by either directing his officers to issue Notices of Violations or by failing to train, instruct and supervise his

officers in the proper legal standard required to sign a probable cause statement and to issue Notices of Violations to Plaintiffs and other similarly situated victims of the scheme.

d. At all time material to this complaint, additional Notices of Violations have been issued to other motor vehicle owners under the Red Light Camera Ordinance.

41. The Defendants as set forth above have used the mails and the internet as part of their broader scheme to defraud Plaintiffs and others similarly situated by false pretenses as set forth herein, and specifically by collecting fines when knew that they could never prove a violation of their Red Light Camera Ordinance, and, in fact, dismiss the charge when a trial is requested by the accused.

42. The Defendants knowingly and willfully participated in the scheme to defraud Plaintiffs and other similarly situated motor vehicle owners through the Notices of Violations issues under the Red Light Camera Ordinance, with the intent to defraud.

43. 18 U.S.C. § 1962 (c) prohibits any person employed by or associated with any enterprise engaged in, or the activities of which affect interstate commerce, to conduct or participate directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. The acts of the Defendants as set forth herein constitute such a pattern of racketeering activity.

44. The foregoing illegal acts were committed in furtherance of an illegal scheme by Defendants City of Arnold and ATS, along with their agents and representatives to include the additional Defendants named herein, which scheme constitutes racketeering under 18 U.S.C. § 1962, in that the entire enforcement system was designed to allow the City of Arnold to levy and collect illegal fines through an enterprise used for the financial benefit of the City of Arnold

and ATS.

45. Defendants' activities have affected interstate commerce in that:
 - a. Property is obtained or is attempted to be obtained from members of the general public, including Plaintiffs, for a violation of Defendants' Red Light Camera Ordinance using the mails and wires.
 - b. The Red Light Camera Ordinance further effects interstate commerce in that those travelling across state lines through the City of Arnold, Missouri are subject to the automated enforcement system.

46. The scheme has been ongoing since July 27, 2006 and continues throughout this litigation, to date, which constitutes a pattern of activity involving two or more predicate acts over a substantial period of time, which acts have a similar purpose, result, participants, victims, methods of commission, and are interrelated, as opposed to being isolated acts or events.

47. The racketeering acts alleged above are not only related, but they amount to or pose a threat of continued illegal activity on the part of these Defendants involving a large number of potential victims.

48. The Defendants' RICO enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which it engages in that the Defendants formed an association in fact amongst themselves, through which they not only coordinated the predicate RICO acts set forth herein, but they also oversaw and coordinated other legitimate activities.

49. Plaintiffs are persons injured in their property by reason of the violations of 18 U.S.C. § 1962 set out above, as Plaintiff have suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for the entry of judgment against Defendants for threefold the damages Plaintiffs sustained, for the costs of this suit, to include Plaintiffs' reasonable attorneys' fees, and for such other and further relief as this Court deems just and proper.

COUNT II

18 U.S.C.A. § 1964(C) – CONSPIRACY TO VIOLATE RICO

50. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraphs 1 through 49 as though fully set forth herein.

51. For the reasons set forth above, the Defendants have created, and therefore, an enterprise affecting interstate commerce exists.

52. Each of the Defendants set forth herein knowingly joined the conspiracy to participate in the conduct of the affairs of the enterprise.

53. The Defendants did, in fact, participate in the conduct of the affairs of the enterprise as set forth herein.

54. The Defendants participated in the conduct of the affairs of the enterprise through a pattern of racketeering by agreeing to commit, or in fact committing, at least two predicate offenses by the mailing of Notices of Violations to Plaintiffs and other similarly situated motor vehicle owners.

55. Plaintiffs were injured in their property by an overt predicate act of the Defendants' conspiracy as Plaintiff have suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for the entry of judgment against Defendants for threefold the damages Plaintiffs sustained, for the costs of this suit, to include Plaintiffs' reasonable

attorneys' fees, and for such other and further relief as this Court deems just and proper.

COUNT III

42 U.S.C.A § 1983 VIOLATION OF DUE PROCESS CLAUSE

56. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraphs 1 through 55 as though fully set forth herein.

57. Defendants' Red Light Camera Ordinance constitutes a criminal enforcement ordinance.

58. As set forth above, § 23.183 of the City's Ordinance requires the City only to prove that the motor vehicle at issue was being operated or used; that the operation or use of the vehicle violated § 23-173; and that the defendant is the owner of the vehicle. In such a case, a rebuttable presumption exists that the owner of the motor vehicle operated or used it at the time and place the violation was captured by a recorded image.

59. The City's Red Light Camera Ordinance is unconstitutional on its face and as applied to Plaintiffs and other similarly situated car owner's under the Due Process Clause of the 14th Amendment to the United States Constitution by impermissibly shifting the burden of proof to car owners to prove that they were not driving at the time a picture of their vehicle was taken by a red light camera, when it is always the City's burden to establish that the accused violated the ordinance at issue, and therefore, was driving the vehicle during the relevant timeframe.

60. The presumption at issue, while rebuttable, allows owners to be convicted of violating a red light in the City of Arnold even when there is no proof of such violation and requires the vehicle owner to come forward with evidence to rebut the presumption, even when the City has not and cannot meet its burden of proving that the vehicle owner was driving the vehicle at the time of the alleged offense.

61. The presumption at issue unconstitutionally shifts the burden of proof to the vehicle owner that s/he was not driving the car at issue

62. Additionally, the presumption at issue is logically divorced from the facts in that there is no rational way that the trier of fact could make the connection permitted by the inference but for the presumption. For example, anyone could lend their motor vehicle to another person or permit that person to drive his/her vehicle on a given day. Additionally, in the case of a minor, a car must be titled in the name of the parent who owns the vehicle, even if the parent never drives the vehicle at issue.

63. Defendants knew or through the exercise of reasonable care should have known that their red light camera Ordinance violated the 14th Amendment to the United States Constitution when it was enacted. Nonetheless, Defendants have enforced and will continue to enforce the constitutionally violative ordinance scheme so as to continue to generate revenue from it, without any real regard for the public safety, by failing to determine who the driver of a vehicle is before charging the owner of the vehicle with an offense.

64. As a direct and proximate result of the unconstitutional ordinance scheme set forth herein, Plaintiffs were damaged in that they were charged with and forced to defend a red light violation issued to them, suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs.

65. The conduct of the Defendants was recklessly and callously indifferent to the constitutional and other rights of Plaintiffs and others similarly situated, malicious and wanton with respect to those rights, and an award of punitive damages is warranted and necessary to punish each Defendant in his individual capacity and to deter each of them and others from the same or a similar transgression in the future.

WHEREFORE, Plaintiffs pray for the entry of judgment against Defendants for a sum that is fair and reasonable, for punitive damages in an amount to be determined at trial, for Plaintiffs' costs and attorneys' fees herein expended pursuant to 42 U.S.C. § 1988, and for such other and further relief as this Court deems just and proper.

COUNT IV

42 U.S.C.A. § 1983- VIOLATION OF 14TH AMENDMENT - AS A RESULT OF OUTRAGEOUS GOVERNMENTAL CONDUCT UNDER COLOR OF LAW

66. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraphs 1 through 55 as though fully set forth herein.

67. Plaintiffs is a member of the class that 42 U.S.C. § 1983 was enacted to protect.

68. Defendants acted under the color of law to harm Plaintiffs and the general public by engaging in outrageous, unlawful and unwarranted conduct, to wit:

a) In order to create income for City and ATS, the Defendants have designed and implemented an enforcement and collection methodology for the act of running a red light in contravention of the laws of the United States and the State of Missouri;

b) By sending a Notice of Violation containing a sworn probable cause statement by Officer Musial to Plaintiffs without any evidence that Plaintiffs were operating a vehicle at the time and date noted on the Notice of Violation. In fact, the sworn probable cause statement is the instant case alleges that both Plaintiffs were operating the same vehicle at the same time and in the same location;

c) Invoking process by issuing a summons requiring Plaintiffs to appear in court to defend against charges with full knowledge that the City could not under any circumstances produce evidence establishing the guilt of Plaintiffs, particularly because

both Plaintiffs could not have been driving the vehicle at the same time in the same location;

d) By compromising public safety by allowing violators to escape reported points against their license and thereby continue to operate a motor vehicle in a dangerous and hazardous manner so long as they had the continued ability to pay fines;

e) By compromising public safety by diverting police manpower away from the patrol and protection of the City of Arnold to a position of revenue enhancement by diverting valuable patrol manpower to analyze images provided by ATS;

f) By requiring Plaintiffs and others similarly situated to prove they are innocent due to the City's inherent inability to identify the person actually operating the vehicle at the time of the alleged violation;

g) By refusing to dismiss alleged violations until an attorney is hired and a trial requested;

h) By threatening to place motor vehicles owners in jail if the ticket is not resolved, even though the Defendants have no evidence that the motor vehicle owner committed the offense alleged; and

i) By agreeing not to report points to the Director of Revenue as required by § 302.302.1(1) if the required amount of money is paid to the City.

69. As a direct and proximate result of the violation of Plaintiffs' substantive due process rights as set forth herein, Plaintiffs were damaged in that they were charged with and forced to defend a red light violation issued pursuant to a red light camera, suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs.

70. The conduct of the Defendants was recklessly and callously indifferent to the constitutional and other rights of Plaintiffs and others similarly situated, malicious and wanton with respect to those rights, and an award of punitive damages is warranted and necessary to punish each Defendant in his individual capacity and to deter each of them and others from the same or a similar transgression in the future.

WHEREFORE, Plaintiffs pray for the entry of judgment against Defendants for a sum that is fair and reasonable, for punitive damages in an amount to be determined at trial, for Plaintiffs' costs and attorneys' fees herein expended pursuant to 42 U.S.C. § 1988, and for such other and further relief as this Court deems just and proper.

COUNT V

42 U.S.C.A. § 1983 CONSPIRACY TO VIOLATE CIVIL RIGHTS

71. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraphs 1 through 70 as though fully set forth herein.

72. Defendants acting under color of law, conspired together and amongst themselves and reached a mutual understanding to undertake a course of conduct that violated Plaintiffs and others' civil rights. In furtherance of this conspiracy, these Defendants committed the following overt acts:

- a) Defendants passed the Red Light Camera Ordinance knowing that it was unconstitutional in an effort to generate additional revenue for the City and ATS;
- b) Defendants installed red lights cameras at various intersections in the City of Arnold, including but not limited to Route 141 at Astra Way Drive, as part of their scheme to generate revenue:

- c) Defendants have issued Notices of Violations, to include a probable cause statement made under penalty for making false statements, to Plaintiffs and other similarly situated motor vehicles owners whose cars have been photographed using red lights cameras, even though the Defendants knew that they did not have probable cause to believe that Plaintiffs or others had committed the violations alleged;
- d) Defendants have collected and continue to collect monies under the unconstitutional ordinance scheme set forth herein;
- e) Defendants have failed to intercede in the unlawful conduct aforescribed, though they each had the opportunity to prevent such actions and knew or should have known that their actions violated Plaintiffs and other similarly situated vehicle owners' civil rights; and
- f) Defendants conspired to ignore the laws of the State of Missouri by encouraging and/or permitting the conduct described above.

73. Defendants shared the general conspiratorial objective, which was to obtain additional revenue and to thereafter conspire to insulate themselves from sanction, civil or criminal by dismissing charges when the accused requested a trial. Additionally, the acts alleged herein were committed and/or taken under the instruction of those with final policymaking authority in the City.

74. These Defendants furthered the conspiracy by participating in it from its inception and/or ignoring this course of conduct so as to insulate themselves and others from liability for the outrageous and unlawful acts of Defendants as described herein.

75. The acts of Defendants as set forth herein were taken under the color of state law.

76. As a direct and proximate result of this violation of Plaintiffs and other similarly situated vehicles owners' due process rights as set forth herein, Plaintiffs were damaged in that they were charged with and forced to defend a red light violation issued pursuant to a red light camera, suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs.

77. The conduct of Defendants and each of them jointly and separately was reckless and callously indifferent to the constitutional rights of Plaintiffs, malicious and wanton with respect to those rights and an award of punitive damages is warranted and necessary to punish Defendants in their individual capacities and to deter them and others from the same or similar transgressions in the future.

WHEREFORE, Plaintiffs pray for the entry of judgment against Defendants for a sum that is fair and reasonable, for punitive damages in an amount to be determined at trial, for Plaintiffs' costs and attorneys' fees herein expended pursuant to 42 U.S.C. § 1988, and for such other and further relief as this Court deems just and proper.

COUNT VI

42 U.S.C.A. § 1983 - FAILURE TO TRAIN, SUPERVISE, CONTROL, OR INSTRUCT AGAINST DEFENDANTS CITY, POWELL, COOLEY, DECKMAN, BRAZEAL, CRISLER, VINSON, MORITZ, AMATO, EMS & SHOCKEY

For Count VI of Plaintiffs cause of action against Defendants City, Powell, Vinson, Moritz, Amato, Ems, Crisler, Cooley, Deckman, Crisler and Shockey, Plaintiff states:

78. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 77 of this Complaint as though fully set forth herein.

79. There exists within the City and Department policies or customs, practices and usages that are so pervasive that they constitute the policies of these Defendants, that caused the

constitutional deprivation Plaintiffs suffered and other similarly situated motor vehicles owners have also suffered as has been fully set forth herein. The policies, customs, practices and usages that exist are:

- a) To enforce the constitutionally defective red light Ordinance at issue herein so as to generate additional revenue for the City
- b) To use the mails to collect fines for alleged violations of the Red Light Camera Ordinance even though these Defendants know that they could never meet their burden of proof with respect to identifying the actual driver violating the red light at issue;
- c) To cause officers of the Department to swear out probable cause statements in support of the Notices of Violations issued and to place the “signature” of the Arnold City Prosecuting Attorney on such Notices in an effort to generate revenue for the City;
- d) To dismiss red light camera Notices of Violations when the accused requests a trial because the Defendants know they cannot meet their burden of proof;
- e) To ignore the laws of the State of Missouri by enforcing the City’s Red Light Camera Ordinance in violation of State law; and
- f) To fail to adequately train, supervise and/or instruct law enforcement officers of the City concerning the practices aforescribed to assure compliance with state and federal laws, and the Constitution of the United States.

80. Upon information and belief, the Defendants named herein have received other complaints regarding the illegality and unconstitutionality of their Red Light Camera Ordinance or in the exercise of reasonable care should have known that the conduct at issue herein posed a

substantial and unreasonable risk of constitutional injury to citizens, like Plaintiffs, and/or other similarly situated motor vehicle owners, and therefore, that constitutional deprivations were likely to occur.

81. Despite what these Defendants knew or through the exercise of reasonable care should have known, these Defendants did nothing to properly, control, instruct, supervise or train Musial and other law enforcement officers of the City to ensure that their conduct conformed with the law, thereby evidencing an unwritten policy on the part of these Defendants tacitly authorizing conduct that violated the constitutional and statutory rights of citizens.

82. The Defendants named herein are vested with the duty, power and authority to train, supervise, discipline and otherwise control the officers of the Department/City. These Defendants have failed in their duty to so train, supervise, instruct, and/or discipline the law enforcement officers aforescribed, in general and specifically. Specifically, these Defendants have failed to adequately train, supervise, instruct and discipline the law enforcement officers aforescribed in the proper and lawful use of issuing probable cause statements and Notices of Violations and have disregarded these violations to ensure additional revenue for the City of Arnold. The Defendants named herein have effectively abrogated the power to so train, supervise, discipline and control the law enforcement personnel aforescribed by failing to act in the face of numerous transgressions of which Defendants knew or should have known and allowing such transgressions to become the custom, policy and practice of the Department and City. As the lawfully designated policy making persons and/or entities governing the law enforcement personnel under their control, these Defendants had the power and the responsibility to prevent the existence of the policies and practices as aforescribed and failed and refused to do so by routinely ignoring these practices. The failures of these Defendants have caused the

constitutional deprivations that have been suffered by Plaintiffs and other similarly situated motor vehicle owners.

83. Defendants are members of the policy making bodies governing the law enforcement personnel herein described and the failure to affirmatively act in the face of transgressions about which they knew or should have known, established the policies of these Defendants to condone and otherwise tolerate constitutionally violative conduct in general and specifically the constitutionally violative conduct set out in this Complaint. Alternatively, these Defendants have delegated and abrogated all or part of their policymaking power. Had these Defendants affirmatively acted to properly train the law enforcement personnel under their control or to properly discipline the law enforcement personnel under their control when they conduct themselves in constitutionally violative ways, the constitutional deprivation of Plaintiffs and other similarly situated motor vehicle owners would not have occurred.

84. Defendant Shockey was at all times relevant herein the supervisor of the Department and his failure to affirmatively act in the face of transgressions about which he knew or should have known established the policies of these Defendants to condone and otherwise tolerate the constitutionally violative conduct set out in this Complaint. Alternatively, this Defendant delegated and abrogated all or part of his supervisory power. Had Shockey affirmatively acted to properly train the law enforcement personnel under his control or to properly supervise the law enforcement personnel under his control or to properly discipline the law enforcement personnel under his control when they conduct themselves in constitutionally violative ways, the constitutional deprivation of Plaintiffs and other similarly situated motor vehicle owners would not have occurred.

85. These supervisory Defendants are aware of or should be aware of the

unconstitutional practices set forth herein. Nevertheless, these supervisory Defendants have done nothing to prevent or stop these practices and in doing so routinely ignored these practices.

86. In their failures as aforescribed, these Defendants intentionally disregarded known facts or alternatively were deliberately indifferent to a risk of constitutional violation, of which they knew or should have known, thereby evidencing their tacit authorization of or deliberate indifference to the conduct described herein, with their acts and/or omissions causing the constitutional violation to Plaintiffs and other similarly situated motor vehicle owners.

87. The acts of Defendants as set forth herein were taken under the color of state law.

88. As a direct and proximate result of the violation of Plaintiffs and other similarly situated vehicles owner's due process rights as set forth herein, Plaintiffs were damaged in that they were charged with and forced to defend a red light violation issued pursuant to a red light camera, suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs.

89. The conduct of Defendants and each of them jointly and separately was reckless and callously indifferent to the constitutional rights of Plaintiffs, malicious and wanton with respect to those rights and an award of punitive damages is warranted and necessary to punish Defendants in their individual capacities and to deter them and others from the same or similar transgressions in the future.

WHEREFORE, Plaintiffs pray for a sum that is fair and reasonable, for punitive damages in an amount to be determined at trial, for Plaintiffs' costs and attorneys' fees herein expended pursuant to 42 U.S.C. § 1988, and for such other and further relief as this Court deems just and proper.

COUNT VII

STATE LAW ABUSE OF PROCESS

90. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraphs 1 through 89 as though fully set forth herein.

91. Upon information and belief Defendant City of Arnold maintains a policy of insurance with respect to tort claims filed against it and its agents, and therefore, to the extent that either the City or its agents may assert a defense of sovereign immunity with respect to any state tort law claim set forth herein, such defense is waived under the provisions of §537.610 R.S.Mo.

92. By issuing a summons to Plaintiffs, the City of Arnold invoked the process of the State of Missouri to compel the appearance of Plaintiffs in court.

93. The summons should not have been issued in that there was no probable cause that Plaintiffs had committed a violation or crime.

94. Defendants have abused the issuance of process and misused the power of the State of Missouri.

95. Defendants made an illegal, improper and perverted use of process, a use neither warranted nor authorized by such process when they filed and served the Notice of Violation against Plaintiffs in an effort to obtain monies from Plaintiffs to which they were not otherwise legally entitled.

96. Defendants had an illegal purpose in exercising their illegal, improper and perverted use of process. Specifically, their purpose for filing and serving the Notice of Violation was to obtain monies from Plaintiffs that they knew that they were not otherwise entitled because they could never prove beyond a reasonable doubt that Plaintiffs violated a red

light on the date of the alleged offense.

97. Defendants acted willfully and with an ulterior purpose not authorized by the process used by them, namely attempting to coerce Plaintiffs to pay monies to the City which were not legally owed to it, a collateral end to which Plaintiffs could not be legally compelled by the use of the process at issue herein.

98. After Plaintiffs requested a trial, the Defendants dismissed the charge against them, further establishing that the use of process in this case was for an ulterior and improper purpose.

99. As a direct and proximate result of the abuse of process, Plaintiffs have been damaged, having suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs in an amount to be proved at trial.

100. The actions of Defendants were outrageous and taken with reckless disregard for the rights of Plaintiffs and other's similarly situated and warrant the imposition of punitive damages.

WHEREFORE, Plaintiffs pray for their actual damages in amount to be proved at trial, punitive damages in an amount reasonably calculated to deter Defendant and other similarly situated from taking such actions in the future, Plaintiffs' costs and attorneys' fees herein expended, and for such other and further relief as this Court deems just and proper.

COUNT VIII

CIVIL CONSPIRACY

101. Plaintiffs incorporate by reference as if fully set forth herein each and every fact and allegation contained in paragraphs 1 through 100 set forth above.

102. Defendants entered into an agreement or understanding amongst and between themselves to do unlawful acts, to wit, to abuse the process of this State.

103. Defendants (constituting two or more people) had an unlawful objective to commit the unlawful acts set forth in paragraph 102 above.

104. The Defendants had a unity of purpose, common design and understanding, and/or meeting of the minds to abuse process with respect to Plaintiffs and other similarly situated motor vehicle owners.

105. After this meeting of the minds, the Defendants committed the following overt acts in furtherance of their conspiracy.

- a) Defendants passed the Red Light Camera Ordinance knowing that it was unconstitutional in an effort to generate additional revenue for the City and ATS;
- b) Defendants installed red lights cameras at various intersections in the City of Arnold, including but not limited to Route 141 at Astra Way Drive, as part of their scheme to generate revenue;
- c) Defendants issued Notices of Violations, to include a probable cause statement made under penalty for making false statements, to Plaintiffs and other similarly situated motor vehicles owners whose cars have been photographed using red lights cameras, even though the Defendants knew that they did not have probable cause to believe that Plaintiffs or others had committed the violations alleged;
- d) Defendants have collected and continue to collect monies under the unconstitutional ordinance scheme set forth herein by issuing Notices of

Violations that constitute an abuse of process;

- e) Defendants have failed to intercede in the unlawful conduct aforescribed, though they each had the opportunity to prevent such actions and knew or should have known that their actions constituted an abuse of process; and
- f) Defendants conspired to ignore the laws of the State of Missouri by encouraging and/or permitting they type of conduct described above.

106. As a direct and proximate result of this civil conspiracy, Plaintiffs have been damaged, having suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs in an amount to be proved at trial.

107. The actions of Defendants were outrageous and taken with reckless disregard for the rights of Plaintiffs and others similarly situated and warrant the imposition of punitive damages.

WHEREFORE, Plaintiffs pray for their actual damages in amount to be proved at trial, punitive damages in an amount reasonably calculated to deter Defendants and other similarly situated from taking such actions in the future, Plaintiffs' costs and attorneys' fees herein expended, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

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