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COPY

AUG 29 2008



MICHAEL K. JEANES, CLERK
K. DYER
DEPUTY CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 JAMES G. TAVERNETTI, a single man, on)
10 his own behalf and on behalf of others) No. CV2008-053305
11 similarly situated)

12 Plaintiff,)

**FIRST AMENDED COMPLAINT
(TORT NON-MOTOR VEHICLE)**

13 v.)

**(Assigned to the Hon. Eddward
Ballinger, Jr.)**

14 REDFLEX TRAFFIC SYSTEMS, INC., a)
15 Delaware corporation, TOWN OF)
16 PARADISE VALLY, ARIZONA, an)
17 Arizona Municipality, JOHN DOES I)
18 through X and JANE DOES I through X,)
19 their respective spouses; BLACK)
20 CORPORATIONS I through X and)
21 WHITE PARTNERSHIPS I through V,)

22 Defendants.

23 **JURISDICTIONAL ALLEGATIONS**

24 1. Plaintiff James G. Tavernetti at all times relevant hereto, was a resident of
25 Maricopa County, Arizona.

26 2. Upon information and belief, at all times relevant hereto, Defendant
27 Redflex Traffic Systems, Inc. ("Redflex"), is and was a Delaware corporation doing
28 business in Maricopa County, Arizona.

1 21. The class contains an identifiably finite number of class members. Each
2 class member sustained damages in the form of receiving a ticket that was generated
3 through the illegal use of a Redflex mobile radar unit that does not comply with
4 applicable law.

5 22. Certification of the class is proper under Arizona Rule of Civil Procedure
6 23(B)(3). Plaintiff estimates the size of the class to number in the thousands, even if the
7 scope of the class is limited to the state of Arizona. Thus, the class is sufficiently
8 numerous such that the joinder of all parties would be impracticable. Information from
9 which Plaintiff may determine the exact number and identity of class members is
10 exclusively within Redflex's control.

11 23. This case presents questions of law or fact which are common to all class
12 members, and that predominate over any questions that affect individual members of the
13 class. Common questions of law and fact include, but are not limited to,

- 14 a) Whether Redflex operated mobile radar units in compliance with
15 applicable law;
- 16 b) Whether Redflex provided notice to class members of the failure of
17 Redflex to comply with any applicable law;
- 18 c) Whether Redflex intentionally or negligently concealed the fact that
19 the Redflex units did not comport with applicable law;
- 20 d) Whether Redflex committed consumer fraud;
- 21 e) Whether Redflex committed common-law fraud;
- 22 f) Whether plaintiffs in the class were damaged by Redflex's conduct;
- 23 g) Whether Plaintiff and the class are entitled to punitive damages;
- 24 and
- 25 h) Whether Plaintiff and the class are entitled to declaratory and or
26 injunctive relief against Defendants.

1 24. Plaintiff's claims are typical of the class members' claims because
2 Plaintiff's and the class members' claims arise from the same course of conduct, *i.e.*
3 Redflex's common scheme to utilize mobile radar detection units in violation of
4 applicable law.

5 25. The law governing Plaintiff's and the class members' claims is the same or
6 materially similar. Plaintiff and the class members are all entitled to recover as a result
7 of Redflex's operation of its mobile radar system in violation of existing law.

8 26. Plaintiff will fairly and adequately represent the interests of the class.
9 Plaintiff's counsel are competent and qualified to bring this litigation, and have
10 substantial and successful experience in negligence actions and insurance litigation. No
11 conflicts exist between Plaintiff and the class members.

12 27. A class-action is superior to all other methods for adjudicating this
13 controversy because it aggregates a large amount of relatively small claims. Absent
14 class relief, it is unlikely that the class members will obtain any relief, particularly
15 against a large company like Redflex, and it is likely that they will continue to be
16 harmed by Redflex's conduct. A class-action also is superior to other methods for
17 adjudicating this controversy because it avoids the risk of inconsistent judgments
18 affecting common rights and claims, and avoids clogging the courts with multiple
19 lawsuits to resolve the legality of Redflex's common course of conduct.

20 28. The amount of damages can be determined from records maintained by
21 Redflex, including but not limited to, the list of those persons to whom Redflex sent or
22 caused to be sent citations issued through the wrongful use of mobile radar devices.
23 There is no need for manual computation of these amounts because, among other things,
24 the precise amount of money unreasonably, unlawfully, unfairly and wrongfully taken
25 from Plaintiff and each class member can be computed through the records and data
26 processing system maintained by Defendant.

27 29. There is no plain, speedy or adequate remedy other than by maintenance of
28 this class-action because each member of the class is an individual who suffered

1 relatively small respective damages, making it economically unfeasible for class
2 members to pursue the remedies individually.

3 30. Further, a class-action is superior to other available methods for the fair
4 and efficient adjudication of the controversies herein, in that the individual damages
5 claimed by Plaintiff and/or the class members make individual actions impractical, as
6 the cost to proceed with suit far exceeds what Plaintiff or any one class member has at
7 stake. It is therefore desirable to concentrate litigation of the claims herein in this
8 forum, and a proposed class-action is manageable.

9 31. Judicial determination of the common legal and factual issues essential to
10 this case is far more efficient and economical as a class-action than through piecemeal
11 individual determinations. The prosecution of separate actions of individual class
12 members, even if theoretically possible, creates a risk of inconsistent or varying
13 adjudication with respect to individual class members against Defendant, and can
14 establish impractical standards of conduct for Defendant.

15 32. Defendants have acted on grounds generally applicable to the class as
16 stated above, thereby making appropriate final injunctive relief and/or corresponding
17 declaratory relief with respect to the class as a whole.

18 33. In the instant action, the class is believed to be so numerous that joinder of
19 all members is impracticable; there are questions of law and fact common to all
20 members of the class; the claims and defenses of the parties are typical of all members
21 of the class; and the party-plaintiff will fairly and adequately protect the members of the
22 class.

23 COUNT ONE

24 (Negligence; Negligence *Per Se*)

25 34. Plaintiff realleges and incorporates by reference the allegations found in
26 paragraphs 1-33 above as if fully set forth herein.

27 35. Defendant Redflex owed a duty of care to Plaintiff and the class.
28

1 36. The relevant FCC rules establish a standard for use of mobile radar units
2 within the United States of America.

3 37. The relevant FCC rules establish a standard for use of mobile radar units
4 within Arizona.

5 38. Redflex operated the mobile radar units within the United States of
6 America in violation of applicable law.

7 39. Redflex operated the mobile radar units within Arizona in violation of
8 applicable law

9 40. The actions and inactions of Redflex breached the standard of care.

10 41. Redflex knew or should have known that an FCC approval was required to
11 operate the mobile radar unit within the United States.

12 42. Redflex knew or should have known that an FCC approval was required to
13 operate the mobile radar unit within the State of Arizona.

14 43. On or about August 7, 2008, Redflex acknowledged in writing that the
15 mobile radar units used within the State of Arizona were not FCC certified.

16 44. A true and correct copy of the correspondence between Redflex and the
17 Arizona Department of Public Safety, wherein Redflex admits that the mobile radar
18 units were not FCC certified, is attached hereto as Exhibit A.

19 45. Redflex, through its actions and inactions, breached the duty of care owed
20 to Plaintiff.

21 46. Redflex, through its actions and inactions, breached the duty of care owed
22 to the class members.

23 47. As a result of Redflex's breach, Plaintiff has been damaged.

24 48. As a result of Redflex's breach, the class members have been damaged.

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1 will, and was in reckless disregard of the rights of Plaintiff and the class members, all of
2 which justify the imposition of punitive damages in an amount to be determined at trial,
3 both as a punishment for its actions and so that Redflex will henceforth be deterred from
4 dealing with others in a similar manner.

5 57. Plaintiff relied on the representations of Redflex and as a result has been
6 damaged.

7 58. The class members relied on the representations of Redflex and as a result
8 have been damaged.

9 59. Redflex's actions constitute a violation of the Arizona Consumer Fraud
10 Act, A.R.S. §44-1522.

11 WHEREFORE, Plaintiff, on his own behalf and on behalf of the class,
12 respectfully requests that this Court enter judgment in favor of Plaintiff and the class
13 and against the Defendant as follows:

14 A. For damages in an amount to be proven at trial;

15 B. For punitive damages in an amount sufficient to punish Defendant and
16 deter others from emulating its conduct.

17 C. For pre and post judgment interest at the highest legal rate until paid;

18 D. For costs and attorneys' fees reasonably incurred; and

19 E. For such other and further relief as this Court deems proper.

20 **COUNT THREE**

21 (Fraud)

22 60. Plaintiff hereby realleges and incorporates by reference the allegations of
23 paragraphs 1-59 above as if fully set forth herein.

24 61. Redflex deliberately misrepresented itself as having authority to operate a
25 mobile radar unit within the United States of America.

26 62. Redflex lacked the appropriate FCC certification to operate a mobile radar
27 unit within the United States of America.

28

1 63. Redflex lacked the appropriate FCC certification to operate a mobile radar
2 unit within Arizona.

3 64. Redflex falsely represented that it had relevant authority required to
4 operate a mobile radar unit in the State of Arizona and the United States of America.

5 65. Redflex acted knowingly and with the intent to induce Plaintiff and the
6 members of the class into acting on said reliance on the misrepresentation when
7 responding to citations issued through mobile radar units operated by Defendant
8 Redflex.

9 66. As a proximate cause of such fraudulent actions by Redflex, Plaintiff has
10 suffered damages, and will continue to suffer damages in an amount to be established at
11 trial.

12 67. As a proximate cause of such fraudulent actions by Redflex, the members
13 of the class have suffered damages, and will continue to suffer damages in an amount to
14 be established at trial.

15 68. Redflex's fraudulent actions and inactions and the resulting injury to the
16 class members was willful, wanton, intentional, motivated by spite, an evil mind and ill
17 will, and was in reckless disregard of the rights of the class members, all of which
18 justify the imposition of punitive damages in an amount to be determined at trial, both as
19 a punishment for its actions and so that Redflex will henceforth be deterred from dealing
20 with others in a similar manner.

21 WHEREFORE, Plaintiff, on his own behalf and on behalf of the class,
22 respectfully requests judgment against Defendant as follows:

- 23 A. Compensatory damages in an amount to be proven at trial;
24 B. Pre-and Post-judgment interest on this sum;
25 C. Punitive damages in an amount to be determined at trial;
26 D. Plaintiff's costs of suit and reasonable attorneys' fees; and
27 E. Such and other further relief as the Court deems just and proper.
28

1 **COUNT FOUR**

2 (Injunctive Relief-Redflex)

3 69. Plaintiff hereby realleges and incorporates by reference the allegations of
4 paragraphs 1-68 above as if fully set forth herein.

5 70. Plaintiff is entitled pursuant to Arizona law to seek any remedy at law or
6 in equity, including an injunction against Redflex, for Defendant Redflex's continuing
7 violations of applicable law.

8 71. The members of the class are entitled, pursuant to Arizona law, to seek
9 any remedy at law or in equity, including an injunction against Redflex, for Defendant
10 Redflex's continuing violations of applicable law.

11 72. Plaintiff has no adequate remedy at law and will suffer immediate and
12 irreparable harm by virtue of Defendant's breaches if injunctive relief is not granted.

13 73. The members of the class have no adequate remedy at law and will suffer
14 immediate and irreparable harm by virtue of Defendant's breaches if injunctive relief is
15 not granted to the class members.

16 74. Because Redflex operated mobile radar units without the appropriate FCC
17 certification, it is likely Plaintiff will be successful on the merits of this matter and,
18 therefore, a preliminary and permanent injunction should issue immediately, requiring
19 Defendant Redflex to cease and desist all use of mobile radar units in violation of
20 relevant law.

21 WHEREFORE, Plaintiff, on his own behalf and on behalf of the class,
22 respectfully requests judgment against Defendant as follows:

23 A. That the Court enter an order setting a time, date and place for a hearing
24 that Redflex show cause why a preliminary injunction should not be issued against it,
25 requiring Redflex to immediately cease and desist all use of mobile radar units in
26 violation of applicable law, and requiring Defendants to comply with the law in the
27 future;

28

1 B. That pursuant to Rule 65 (A) (2), ARIZONA RULES OF CIVIL PROCEDURE,
2 the trial on the merits be heard at the same time as the preliminary injunction;

3 C. That a permanent injunction be issued reflecting the relief set forth above;

4 D. That Plaintiff be awarded reasonable attorneys fees, expenses, costs and
5 interest;

6 E. That Plaintiff be awarded post-judgment interest at the highest rate
7 permitted by law; and

8 F. That Plaintiff be granted such other and further relief as the Court deems
9 just and proper.

10 **COUNT FIVE**

11 (Injunctive Relief-Paradise Valley)

12 75. Plaintiff hereby realleges and incorporates by reference the allegations of
13 paragraphs 1-74 above as if fully set forth herein.

14 76. Plaintiff is entitled pursuant to Arizona law to seek any remedy at law or
15 in equity, including an injunction against Paradise Valley, for Defendant Paradise
16 Valley's continuing violations of applicable law.

17 77. The members of the class are entitled, pursuant to Arizona law, to seek
18 any remedy at law or in equity, including an injunction against Paradise Valley, for
19 Defendant Paradise Valley's continuing violations of applicable law.

20 78. Plaintiff has no adequate remedy at law and will suffer immediate and
21 irreparable harm by virtue of Paradise Valley's attempts to enforce citations issued
22 through use of Redflex's illegal operation of mobile radar units if injunctive relief is not
23 granted.

24 79. The members of the class have no adequate remedy at law and will suffer
25 immediate and irreparable harm by virtue of Paradise Valley's attempts to enforce
26 citations issued through use of Redflex's illegal operation of mobile radar units if
27 injunctive relief is not granted
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1 80. Because Redflex operated mobile radar units without the appropriate FCC
2 certification, it is likely Plaintiff will be successful on the merits of this matter and,
3 therefore, a preliminary and permanent injunction should issue immediately, requiring
4 Defendant Paradise Valley to cease and desist all attempts to enforce citations issued
5 through the use of mobile radar units operated in violation of relevant law.

6
7 WHEREFORE, Plaintiff, on his own behalf and on behalf of the class,
8 respectfully requests judgment against Defendant as follows:

- 9 A. That the Court enter an order setting a time, date and place for a hearing
10 that Paradise Valley show cause why a preliminary injunction should not
11 be issued against them, requiring them to immediately cease and desist all
12 attempts to enforce citations issued through the use of mobile radar units
13 operated in violation of relevant law;
- 14 B. That pursuant to Rule 65 (A) (2), ARIZONA RULES OF CIVIL PROCEDURE,
15 the trial on the merits of heard at the same time as the preliminary
16 injunction;
- 17 C. That a permanent injunction be issued reflecting the relief set forth above;
- 18 D. That Plaintiff be awarded reasonable attorneys fees, expenses, costs and
19 interest;
- 20 E. That Plaintiff be awarded post-judgment interest at the highest rate
21 permitted by law; and
- 22 F. That Plaintiff be granted such other and further relief as the Court deems
23 just and proper.
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DATED this 28th day of August, 2008.

PAK & MORING PLC

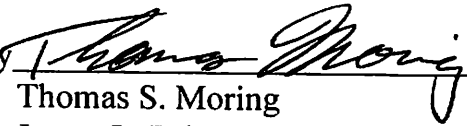
By 
Thomas S. Moring
James L. Pak
8930 E Raintree Drive, Suite 100
Scottsdale, Arizona 85260
Attorneys for Plaintiff

EXHIBIT A



REDFLEX
TRAFFIC SYSTEMS

Redflex Traffic Systems, Inc.
15020 N. 74th Street
Scottsdale, AZ 85260
Tel: 480 607 0705
Fax: 480 607 0752
www.redflex.com

August 7, 2008

VIA EMAIL

Commander Thomas Woodward
Arizona Department of Public Safety

Re: Department of Public Safety Contract No. L07-027

Dear Commander Woodward:

I am writing to reassure the Arizona Department of Public Safety (DPS) that Redflex Traffic Systems, Inc. (REDFLEX) wants to make things right given our discovery that the radar units we used in the pilot program were not certified by the Federal Communications Commission (FCC).

Unbeknownst to me until recently, there is a difference between a radar unit being FCC compliant and a unit being FCC certified. It is now my understanding that the radar REDFLEX has been using is FCC compliant, with certification expected within the next week. Of course, as soon as we learned that the unit we were using had not yet received certification, we removed the 2 speed enforcement vehicles under this program using this radar.

The pending FCC certification does not reflect on the accuracy or reliability of the radar units. While we do not understate the need to comply with applicable requirements, the matter of certification has no impact whatsoever on the integrity of speed measurements in the DPS speed enforcement pilot program. Rather, the FCC certification merely confirms that the unit does not interfere with other radio frequencies. Since the radar is FCC compliant, it meets all applicable standards. As shown by the enclosed R.H.F., Inc. Recertification and Certificates of Calibration for both speed enforcement vehicles and external tuning fork speed verification tests performed before and after each deployment, these units were fully and accurately functioning throughout their use in this program. Citations were issued only where drivers were actually speeding at or above the DPS mandated speed threshold.

A member of the Redflex Group



REDFLEX
TRAFFIC SYSTEMS

We do not believe that it was "illegal" to use this radar and at worst, REDFLEX would be subject to a civil penalty by the FCC. Specifically, under Sections 501 and 502 of the FCC Act, a violation only carries potential criminal implications (and thus would be "illegal") if it was committed "willfully and knowingly." Here, it was simply an honest oversight. REDFLEX certainly did not intentionally violate the FCC Act or regulations; we are taking swift action to remedy the oversight, and the unit was and is FCC compliant.

We respect and will abide by DPS's decision on whether to vacate any citations generated through the use of the radar unit and to refund corresponding fines. However, it appears that there is no reason to do so since the units were accurately measuring speed and the FCC certification does not bear on performance or reliability of the units. Further, we believe that the FCC has exclusive jurisdiction to interpret and enforce its regulations, such that a driver could not use the lack of FCC certification to challenge a citation, especially since there is no question regarding accuracy and reliability.

Regardless of our respective contractual rights and obligations, we simply want to make sure that we have served DPS well. To that point please advise if you want us to continue to hold the two speed enforcement vans from deploying until next week when the certification is received or to outfit the units with our older model FCC certified radar.

We apologize for any inconvenience resulting from this situation. While we at REDFLEX pride ourselves on being a team of professionals who do things right, we are only human and, unfortunately, oversights do happen. We accept responsibility and will resolve this situation to your and DPS's complete satisfaction.

Please let us know what DPS would like us to do to resolve this matter. Once again, we cherish the opportunity to have DPS as our customer. We stand behind our products and service and reaffirm our commitment to resolve this matter with DPS. If you have any questions, please let us know.

Sincerely,

Karen Finley
President/CEO
Redflex Traffic Systems, Inc.

Enclosures