

LAW OFFICES OF J. D. DOBBINS PLLC
J. D. DOBBINS
BAR # 013519
4121 EAST VALLEY AUTO DRIVE,
SUTIE 116
MESA ARIZONA, 85206
480-241-2919
888-888-5440
denny@crimshield.com

2-7-11

Attorneys for Defendants:
AAA Photo Safety, Inc.
David Pickron and Stephanie Pickron
Casey Arnett

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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DANIEL ARTHUR GUTENKAUF,

Plaintiffs,

vs.

THE CITY OF TEMPE, ET AL

Defendants.

Civil Action No.

2:10-cv-021219-FJM

12 b6 MOTION TO DISMISS

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1 The Defendants, AAA Photo Safety, Inc., and David Pickron and Stephanie
2 Pickron, and Casey Arnett, by and through undersigned counsel, move this Court to
3 dismiss the Plaintiff's complaint pursuant to the Rules of Civil Procedure 12b6 as
4 Plaintiff has failed to state a claim upon which relief can be granted.
5

6
7 **I. Facts regarding Defendants, AAA Photo Safety, Inc., Casey Arnett, David**
8 **Pickron and Stephanie Pickron**

9 On October 21, 2008, Casey Arnett was a process server duly licensed by
10 Maricopa County to serve legal process in the State of Arizona as a process server. On
11 said date, Casey Arnett in fact served a summons and complaint on the Plaintiff that was
12 issued by the Tempe City Court. Casey Arnett served the summons and complaint as he
13 would any other summons and complaint. No allegations have been made that service of
14 process was not performed properly.
15

16 AAA Photo Safety Inc. through a verbal agreement was an independent contractor
17 for Redflex Traffic Systems, Inc. to serve pleadings. The only involvement of Defendant
18 AAA Photo Safety, Inc was that it assigned Casey Arnett that particular summons and
19 complaint to serve on the Plaintiff. Casey Arnett was hired as an independent contractor
20 to serve the summons and complaints for AAA Photo Safety, Inc. David Pickron is
21 President of AAA Photo Safety, Inc. and a Stockholder of AAA Photo Safety, Inc.
22 Although he was also the President of the company, he was not even the manager who
23 assigned the work to Casey Arnett. Stephanie Pickron had no involvement at all in the.
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1 **II. NO LEGAL OR EQUITABLE CAUSE OF ACTION EXISTS AGAINST A**
2 **LICENSED PROCESS SERVER, A PROCESS SERVING COMPANY OR ITS**
3 **STOCKHOLDERS FOR THE PROCESS SERVER PROPERLY AND LEGALLY**
4 **SERVING A COURT ISSUED SUMMONS AND COMPLAINT IN THE STATE**
5 **OF ARIZONA.**

6 The only thing that the process server, Defendant Casey Arnett, did was that he
7 legally served a summons and complaint on the Plaintiff as admitted to by the Plaintiff in
8 his complaint on Page 11, lines 14-15 where Plaintiff states:

9
10 *“Plaintiff did not respond to the citation, and was given service of the process of*
11 *the traffic ticket on October 21, 2008, at 4:36 pm by Casey Arnett...”*
12

13
14 In the Plaintiff’s case the Rules of Procedure are clear that the process must be
15 delivered to the person named on the summons or to a person of suitable age and
16 discretion who resides in the premises. It is undisputed that Mr. Arnett did exactly what
17 he was supposed to do, was in the scope of duty as a process server and did so in the
18 manner outlined in the Rules of Civil Procedure to effectuate service on Plaintiff of a
19 summons and complaint that was issued by an Arizona Court; no more and no less.

20
21 Now Plaintiff has brought claims against the Defendants, Arnett, Pickron and
22 AAA Photo Safety, Inc that are audacious, bizarre, outrageous, abusive and frivolous and
23 that do not exit, nor does any relief exist, based on the simple facts of the matter.

24 There is no causation or any theory of liability at all for Plaintiff to be able to hold
25 a process server, process serving company that contracts to serve process performed, nor
26

1 its stockholders responsible for the constitutionality, legality or contents of a claim in a
2 complaint that is issued by an Arizona Court. It is not the job, nor function, of a process
3 server, nor could it be.

4 **III. TO HOLD A PROCESS SERVER, A PROCESS SERVING COMPANY AND**
5 **ITS STOCKHOLDERS LIABLE FOR CLAIMS SO FAR OUTSIDE THE SCOPE**
6 **OF DUTY AND PERFORMED EXACTLY AS MANDATED BY LAW IS**
7 **AGAINST PUBLIC POLICY.**

8
9 To hold a process server process, process serving company and its stockholders
10 responsible for the constitutionality, legality or contents of a complaint before serving the
11 paperwork would make the process server a judge and jury, before the merits of the issues
12 in the complaint were ever heard by the trier of fact. Of course, Plaintiff's far fetched
13 notion would require the process server, the process serving company and its stockholder
14 to hire attorneys to somehow review every complaint that came through its office which
15 would effectually shut down legal jurisprudence. In fact, if legal delivery of process were
16 set up in that way no one would ever want to be a process server and no process could get
17 served for fear of constant law suits.

18
19 Under the Plaintiff's theory, which does not exist, if a process server, serving
20 company or its stockholders were responsible for the constitutionality, legality or contents
21 of a complaint it would then, by necessity follow, requiring court clerks to be held to the
22 same ridiculous standard; to read every document and somehow verify the authenticity of
23 the merits of the complaint before issuing the complaint, otherwise the court clerk would
24 also be complicit in the Plaintiff's complaint allegation theories.

1 Like a court clerk, it is not the function of a process server, process serving
2 company or its stockholders to attempt to interpret the facts and legal allegations of a
3 complaint to determine the merits of the complaint before the complaint is served on a
4 named defendant, or any time for that matter.

5
6 **IV. THE COMPLAINT ALLEGATIONS AGAINST THESE DEFENDANTS**
7 **MAKE NO SENSE UNDER ANY LAW OR THEORY OF EQUITY.**

8 Plaintiff cannot paint the process server, the process serving company and its
9 stockholders into being responsible for whether or not photo radar ticketing and the
10 subsequent legal process is illegal simply because the Plaintiff was served with legal
11 process by a process server. It is a silly allegation. Yet that is exactly what Plaintiff has
12 alleged.

13
14 Based on the limited duty of the process server to deliver the summons and
15 complaint, Plaintiff, by mere desire cannot to pull the process server into what appears
16 from Plaintiff's complaint to be an attack on the constitutionality or operations of Photo
17 Radar ticketing and court procedures in general. Such an attempt is just absurd,
18 overbroad, ostentatious and reckless.

19
20 Here, there is no nexus or link between any allegations of wrong doing set forth by
21 the Plaintiff's complaint regarding the process server, the process serving company and
22 its stockholders, and any legal remedy requested in the Plaintiff's complaint since nothing
23 was done wrong by the process server, the process serving company or its stockholders.

24 A process server should not be hassled and burdened with defending a law suit
25 when the process server has literally done nothing wrong. The summons to plaintiff was
26

1 simply a notification to appear at court and that is the full extent of the scope of the
2 process server's duty; serving the summons and complaint. Defendant Arnett simply did
3 his job as a process server. The merits of the complaint are not the process server's
4 responsibility. Simply because the process server is licensed by the State does not create
5 a connection between the process server and the allegations and remedies of 42 USC 1983
6 or the Fourteenth Amendment of the US Constitution, RICO statutes, Mail Fraud, Wire
7 Fraud, Extortion nor Conspiracy no matter what absurd theories are touted by the
8 Plaintiff.

9
10 **V. CONCLUSION**

11 The fact that a service of process took place in a way that was legally required
12 under the Arizona Rules of Civil Procedure does not, by any stretch of the imagination in
13 fact, law or equity, way give rise to any claim or remedy for allegations set forth by
14 Plaintiff against these Defendants that they violated 42 USC 1983 or the Fourteenth
15 Amendment of the US Constitution, RICO statutes, Mail Fraud, Wire Fraud, Extortion nor
16 Conspiracy statutes or regulations. Mr. Gutenkauf's does not state a claim upon which
17 relief can be granted. Such claims do not exist, nor can they under these facts.

18
19 The only inference that can be taken by the Plaintiff's complaint against these
20 Defendants is that Plaintiff is wasting judicial economy, is motivated by spite and
21 revenge and that he has abused the court process in an attempt at malicious and frivolous
22 prosecution.

23
24 Plaintiff's action by bringing a complaint against these Defendants is a violation
25 of Rule 11 and Defendant's request this Court grant attorney fees and costs for having to
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respond to Plaintiff's frivolous allegations. The Defendant's move this court to
1 summarily dismiss the Plaintiff's complaint against them.

2
3 ... DATED this 8th day of February, 2011.

4
5
6 COPY of the foregoing mailed this
7 _8th_ day of February, 2011, to:

By: s/J. D. Dobbins
Law Offices of J. D. Dobbins
Attorney for Defendants
AAA Photo Safety, Inc.
David Pickron and Stephanie Pickron
Casey Arnett

8 City of Tempe – City Attorney
9 21 E. Sixth Street, Suite 201
Tempe, AZ 85281
10 480-350-8227
480-350-8645 (Fax)

11 Office of The Arizona Attorney General
12 Civil Division
1275 West Washington
13 Phoenix, AZ 85007

14
15 Redflex Holdings LTD
16 Redflex Traffic Systems, Inc
Andrejs Bunkse
17 General Counsel
23751 N. 23rd Avenue
18 Phoenix, AZ 85085
19 Direct: 623-207-2128
Email: abunkse@redflex.com

20 The Arizona Department of Public Safety
21 Office of The Arizona Attorney General

22 Daniel Arthur Gutenkauf
1847 E. Apache Blvd, #41
23 Tempe, Arizona 85281

24 HONORABLE FREDERICK J. MARTONE
United States District Court
25 Sandra Day O'Connor U.S. Courthouse, Suite 526
401 West Washington Street, SPC 62
26 Phoenix, AZ 85003-2158

Phone: (602) 322-7590

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