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2-18-11

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

**REPLY TO PLAINTIFF'S  
RESPONSE TO 12B6 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, replies to Plaintiff's  
3 Response to Defendant's 12b6 motion to dismiss.  
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6 **I. PLAINTIFF HAS ATTEMPTED TO CREATE DUTIES WHERE NONE**  
7 **EXIST.**

8           The Plaintiff has spent a great deal of time attempting to create duties for the  
9 Defendants that do not exist based on rules that do not exist for serving process. The  
10 requirements for a process server for effectuating service of process are simple and clear.  
11 The Plaintiff fails to understand that the process server is a simply a mailman and delivers  
12 summons' and pleadings. There is no legal or other duty on the part of the process server  
13 to read the contents of a summons and complaint or to make a determination as their  
14 legality no matter how the Plaintiff tries to frame his claims. No matter what rhetoric,  
15 rambling arguments or inferences the Plaintiff tries to make in his response as a matter of  
16 law the simple fact remains; the only duty the process server has is to serve the process  
17 issued by the court pursuant to the rules of civil procedure set forth in The Arizona Rules  
18 of Civil Procedure Sections 4.1(b) and (d) which states:  
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21 (b) The summons and pleading being served shall be served together. The party  
22 procuring service is responsible for service of a summons and the pleading being served  
23 within the time allowed under rule 4(i) of the Rules and shall furnish the person effecting  
24 service with the necessary copies of the pleading to be served.  
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1 (d) Service upon an individual from whom a waiver has not been obtained and filed,  
2 other than those specified in paragraphs (e), (f) and (g) of the this Rule 4.1, shall be  
3 effected by delivering a copy of the summons and of the pleading to that individual  
4 personally or by leaving copies thereof to that individual personally or be leaving copies  
5 thereof at that individual's dwelling house or usual place of abode with some person of  
6 suitable age and discretion then residing therein or be delivering a copy of the summons  
7 and the pleading to an agent authorized by appointment or by law to receive service of  
8 process.

9 Plaintiff admitted in his complaint that he was served with the summons and  
10 complaint and then responded to the court summons. At no time did the plaintiff ever  
11 claim that the service of process was not accomplished pursuant to the Rules that govern  
12 serving process as stated above.

13 The Plaintiff states, "This issue is restricted exclusively to issuance of traffic  
14 citations, certified by police officers, mailed by Redflex, and transmitted to courts  
15 electronically by Redflex." The Defendants have nothing to do with those things.

16 The Plaintiff wails that the Defendants should have known about some Superior  
17 Court rule about photo radar tickets, but has cited no such rule or case about photo radar  
18 tickets and has cited no notice from the court to the process server of such a rule or  
19 mandate to process servers regarding the same that may form some duty for process  
20 servers to first read and analyze a summons and complaint before serving it.

21 It is interesting, but disingenuous, that the Plaintiff sees process serving as the  
22 "linchpin" of his case since without the proper service taking place the "...court never  
23 acquires jurisdiction..." However, the Plaintiff never brought the defense that service of  
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1 process was flawed, and that therefore, the court never should have had jurisdiction over  
2 him in the traffic case.

3 In any event, the Plaintiff wants to have his own rules apply to process servers as  
4 he sets forth on page 12, lines 8-17 of his reply instead of the Rules of the Court. Plaintiff  
5 calls his rules, "*The formula for verifying a valid traffic ticket is amazingly simple*" and  
6 then goes through a list he created that in his world the process server should first check  
7 before serving process. I realize that Plaintiff is proper, though he seems quite schooled  
8 in some aspects of the law. However, he should realize that he cannot make up rules that  
9 he would like to apply to a process server. It just does not work that way. The Plaintiff's  
10 rules and formulas simply do not apply to the process server and the process server must  
11 follow only the Court rules.

12 **V. CONCLUSION**

13 The Plaintiff has failed to state a claim upon which relief can be granted.  
14 Therefore, Plaintiff's complaint against the Defendants must be dismissed as a matter of  
15 law. Defendant's request this Court grant attorney fees and costs for having to respond to  
16 Plaintiff's frivolous allegations. The Defendant's move this court to summarily dismiss  
17 the Plaintiff's complaint against them.  
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20 ··· DATED this 18th day of February, 2011.

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24 COPY of the foregoing mailed this  
25 \_18th\_ day of February, 2011, to:

26  
By: s/J. D. Dobbins  
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