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IN THE 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.

CASE No. 2:10-cv-02129-FJM

**REDFLEX TRAFFIC SYSTEMS  
DEFENDANTS' RULE 12(B)(6)  
MOTION TO DISMISS**

**I. INTRODUCTION.**

In August 2008, while driving on Rural Road in Tempe, Plaintiff Daniel Arthur Gutenkauf ("Plaintiff") or his identical twin bother Dennis (we may never know which one) was captured by photo radar traveling at a rate of speed in excess of the posted speed limit. Several weeks later, Plaintiff, as the owner of the vehicle, was served with a civil traffic ticket. Plaintiff then did what siblings (particularly those that are identical) have been doing for ages -- he blamed his brother. The trial court judge did not credit Plaintiff's "identical twin" defense, but the Superior Court did, overturning Plaintiff's civil traffic conviction and ordering a refund of Plaintiff's \$197.00 fine.

Unfortunately, success on appeal was not solace enough for Plaintiff, who is now trying to leverage his civil traffic victory into the prototypical "federal case" against numerous state and local officials. In his 87-page Complaint, Plaintiff claims the

1 existence of a wide-ranging, multi-level conspiracy to deprive Plaintiff of his  
2 constitutional rights and to defraud him of \$197.00. Boiled down, however, Plaintiff's  
3 gripe is that the defendants in this case did not verify his driver's license picture before  
4 issuing a civil traffic ticket. But while having an identical twin as a permissive user of  
5 your vehicle may help defeat a traffic ticket, it is fatal to Plaintiff's claims in this case.  
6 After all, checking Plaintiff's driver's license photo would not have exculpated him when  
7 whomever was driving looked just like him. Ultimately, if this is indeed a case of  
8 mistaken identity, nature is primarily to blame, not the defendants. For that reason, and  
9 many others detailed below, the Court should dismiss Plaintiff's claims against the  
10 Redflex Defendants<sup>1</sup> with prejudice.

## 11 **II. RULE 12(B)(6) STANDARD.**

12 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
13 accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, --  
14 U.S. --, 129 S. Ct. 1937, 1949 (2009) (internal quotation marks omitted). "A claim has  
15 facial plausibility when the plaintiff pleads factual content that allows the court to draw  
16 the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*  
17 (internal quotation marks omitted). Although "[the Court] must take all of the factual  
18 allegations in the complaint as true, [the Court is] not bound to accept as true a legal  
19 conclusion couched as a factual allegation." *Id.* at 1949-50.

## 20 **III. PLAINTIFF'S COMPLAINT DOES NOT STATE A VALID CLAIM** 21 **AGAINST THE REDFLEX DEFENDANTS FOR VIOLATION OF** 22 **SECTION 1983.**

23 Plaintiff's first claim for relief against the Redflex Defendants is under 42 U.S.C. §  
24 1983 for violation of his federal constitutional rights. "To state a claim for relief under  
25 section 1983, the Plaintiffs must plead two essential elements: (1) that the Defendants  
26 acted under color of state law; and (2) that the Defendants caused them to be deprived of a  
right secured by the Constitution and laws of the United States." *Johnson v. Knowles*, 113

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27 <sup>1</sup> The Redflex Defendants are Redflex Traffic Systems, Inc. ("Redflex"), Graham Davie  
28 (solely in his capacity as a Director of Redflex), Karen and Tim Finley, Bill Harper,  
Matthew DeGraw, and their respective spouses.

1 F.3d 1114, 1117 (9th Cir. 1997). Moreover, state actors are entitled to qualified immunity  
2 unless the plaintiff can show that the constitutional right alleged to have been violated was  
3 clearly established. *See Brewster v. The Bd., Ed., Lynwood Unified Sch. Dist.*, 149 F.3d  
4 971, 982 (9th Cir. 1998). Here, Plaintiff's Complaint satisfies none of these three  
5 elements.

6 **A. Plaintiff's Complaint Does Not Plausibly Plead that the Redflex**  
7 **Defendants Acted Under Color of State Law.**

8 The Redflex Defendants are private individuals; Plaintiff does not appear to claim  
9 otherwise. Consequently, in order to hold them liable under § 1983, Plaintiff must plead  
10 and prove that there was significant state involvement in the Redflex Defendants' actions.  
11 *See Howerton v. Gabica*, 708 F.2d 380, 382 (9th Cir. 1983). The central question to  
12 determine whether state action lies is whether "the alleged infringement of federal rights  
13 [is] fairly attributable to the government." *Sutton v. Providence St. Joseph Med. Ctr.*, 192  
14 F.3d 826, 835 (9th Cir. 1999). The Ninth Circuit recognizes at least four different tests to  
15 identify state action: (1) public function; (2) joint action; (3) governmental compulsion or  
16 coercion; and (4) governmental nexus. *See Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th  
17 Cir. 2003). None of the four tests is satisfied in this case.

18 First, "[t]he public function test is satisfied only on a showing that the function at  
19 issue is both traditionally and exclusively governmental." *Id.* at 1093 (internal quotations  
20 omitted). Here, Plaintiff does not plead that the Redflex Defendants are performing a  
21 function -- taking photo radar pictures and transmitting them to the government for  
22 certification -- that is traditionally and exclusively governmental.

23 Second, "[u]nder the joint action test, we consider whether 'the state has so far  
24 insinuated itself into a position of interdependence with the private entity that it must be  
25 recognized as a joint participant in the challenged activity.'" *Id.* (quoting *Parks Sch. of*  
26 *Business, Inc. v. Symington*, 51 F.3d 1480, 1486 (9th Cir. 1995)). Again, Plaintiff does  
27 not plead the interdependence required to render the Redflex Defendants state actors.

28 Third, "[t]he compulsion test considers whether the coercive influence or

1 'significant encouragement' of the state effectively converts a private action into a  
2 government action." *Id.* at 1094. Other than the fact that the Redflex Defendants are  
3 required to perform certain actions under Redflex's contract with the City of Tempe,  
4 Plaintiff does not, and cannot, plead that the government applied coercive influence to the  
5 Redflex Defendants.

6 Lastly, the nexus test asks whether "there is a such a close nexus between the State  
7 and the challenged action that the seemingly private behavior may be fairly treated as that  
8 of the State itself." *Id.* at 1094-95 (quoting *Brentwood Academy v. Tenn. Secondary Sch.*  
9 *Athletic Assoc.*, 531 U.S. 288, 295 (2001)). In the instant case, plaintiff does not allege  
10 that Redflex is anything other than " an organization of natural persons acting on their  
11 own," or that Redflex is composed of and run by public officials acting in their public  
12 capacity. *See Brentwood*, 531 U.S. at 298-300. In sum, Plaintiff fails to plead the state  
13 action necessary to find liability under § 1983 with respect to the Redflex Defendants.

14 **B. Plaintiff's Complaint Does Not Plausibly Plead a Violation of His**  
15 **Federal Constitutional Rights.**

16 While filtering through Plaintiff's numerous allegations is challenging, it appears  
17 that he is claiming that the Redflex Defendants violated his Fourth and Fourteenth  
18 Amendment rights by serving a civil traffic ticket without first checking his driver's  
19 license photo to ensure it matched the individual driving the vehicle in the photo radar  
20 picture. Plaintiff's claim fails for a number of reasons.

21 To begin, Plaintiff's own Complaint demonstrates that it is not Redflex that is  
22 tasked with certifying that the driver captured in a photo radar picture is the same person  
23 to whom the civil traffic ticket is being mailed. As Plaintiff admits, Redflex's  
24 involvement in this case is by virtue of having generated the picture of the individual  
25 driving Plaintiff's vehicle. Thereafter, Redflex transmitted the photo to the City of  
26 Tempe, where a Tempe police officer exercised independent judgment and provided the  
27 certification required under A.R.S. § 28-1561(A).<sup>2</sup> (*See* Complaint ¶¶ 257-58.) Redflex

28 <sup>2</sup> A.R.S. § 28-1561(A) provides the following:

1 then mailed the civil traffic ticket to Plaintiff. (*See id.* ¶ 259.) Nothing in the Constitution  
2 requires the Redflex Defendants to double check an officer's certification prior to mailing  
3 out a civil traffic ticket. Simply put, neither the act of transmitting a picture of Plaintiff's  
4 vehicle to the Tempe Police Department nor the act of mailing out a civil traffic ticket  
5 following independent certification is a violation of Plaintiff's Fourth or Fourteenth  
6 Amendment rights.

7 Even assuming that Redflex somehow violated A.R.S. § 28-1561(A) by mailing  
8 out Plaintiff's civil traffic ticket, such a violation of state law does not give rise to a  
9 violation of Plaintiff's Due Process rights. "State law can create a right that the Due  
10 Process Clause will protect only if the state law contains (1) substantive predicates  
11 governing official decision-making, and (2) explicitly mandatory language specifying the  
12 outcome that must be reached if the substantive predicates have been met." *James v.*  
13 *Rowlands*, 606 F.3d 646, 656 (9th Cir. 2010). A.R.S. § 28-1561(A) contains absolutely  
14 no substantive predicates governing official decision-making -- it simply requires that a  
15 certification of "reasonable grounds" be included with a civil traffic complaint. Moreover,  
16 to the extent it contains substantive predicates, A.R.S. § 28-1561(A) does not specify any  
17 outcomes, other than that the civil traffic complaint will contain a certification. Given that  
18 Plaintiff's civil traffic ticket indisputably contained the certification prescribed by A.R.S.  
19 § 28-1561(A), the required outcome was met. *See Mueller v. Auker*, 576 F.3d 979, 998  
20 (9th Cir. 2009) ("As a general rule, however, a violation of state law does not lead to  
21 liability under § 1983."). Thus, Plaintiff's Complaint does not make out a violation of his  
22 constitutional rights, especially at the hands of the Redflex Defendants.

23 More broadly speaking, it is abundantly clear that Plaintiff received all of the  
24 process due to him in this case. The traffic proceeding at issue was *civil* in nature, and  
25 thus Plaintiff was not entitled to the full panoply of procedural protections attendant to

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26  
27 Uniform traffic complaint forms need not be sworn to if they contain a form of  
28 certification by the issuing officer in substance as follows: "I hereby certify that I have  
reasonable grounds to believe and do believe that the person named herein committed the  
offense or civil violation described herein contrary to law."

1 criminal proceedings. *See* A.R.S. § 28-1591(A); *Hicks v. Feiock*, 485 U.S. 624, 631  
2 (1988) ("[O]ne who challenges the State's classification of the relief imposed as "civil" or  
3 "criminal" may be required to show "the clearest proof" that it is not correct as a matter of  
4 federal law."); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 ("Consistent with the civil  
5 nature of the proceeding, various protections that apply in the context of a criminal trial do  
6 not apply in a deportation hearing."). Nonetheless, prior to the imposition of a \$179.00  
7 fine, Plaintiff was hand served with notice of his alleged violation and notice of his rights  
8 when responding. The citation even provided further protections: an opportunity and  
9 instructions for Plaintiff to identify the actual driver of the vehicle at the time of the  
10 violation. (*See* Complaint, Exh. M.) Plaintiff was then provided with a full and fair  
11 hearing before a neutral decision maker where Plaintiff was permitted to submit evidence  
12 that he was not the driver of the vehicle pictured. Finally, after the trial judge ruled  
13 against him, Plaintiff was provided a full opportunity to appeal the trial judge's ruling to  
14 the Maricopa County Superior Court. Given the civil nature of the proceedings, the small  
15 amount of the private interest at stake (\$179.00), the slight risk of erroneous deprivation,  
16 and the City of Tempe's strong interest in traffic safety, Plaintiff was given ample due  
17 process. *See Matthews v. Eldridge*, 424 U.S. 319, 335 (1976); *Balaban v. City of*  
18 *Cleveland*, 2010 WL 481283, \*6-7 (N.D. Ohio Feb. 5, 2010). Consequently, Plaintiff  
19 cannot state a claim under § 1983.

20 **C. Plaintiff Cannot Show a Violation of Clearly Established Law.**

21 Even if the Redflex Defendants somehow could have violated Plaintiff's federal  
22 constitutional rights, the Redflex Defendants are entitled to qualified immunity because  
23 their actions were not contrary to clearly established law. Those imbued with state  
24 authority<sup>3</sup> are entitled to qualified immunity unless it is shown that the right they are  
25 alleged to have violated "is clearly established such that a reasonable government official

26 \_\_\_\_\_  
27 <sup>3</sup> The Redflex Defendants argue in section III(A) that Plaintiff has not plausibly pled that  
28 they acted under color of state law. The qualified immunity argument is an alternative  
argument that is only relevant should the Court find that Plaintiff has plausibly pled state  
action on the Redflex Defendants part.

1 would have known that his conduct was unlawful in the situation he confronted." *Dunn v.*  
2 *Castro*, 621 F.3d 1196, 1199 (9th Cir. 2010). "[I]n the absence of binding precedent, a  
3 court should look to whatever decisional law is available to ascertain whether the law is  
4 clearly established for qualified immunity purposes, including decisions of . . . district  
5 courts." *Drummond v. City of Anaheim*, 343 F.3d 1052, 1060 (9th Cir. 2003).

6 Here, neither the U.S. Supreme Court nor the Ninth Circuit has ever addressed  
7 whether it is a violation of one's federal constitutional rights to send a notice of traffic  
8 violation without first checking the photo radar picture against the registered owner's  
9 driver's license photograph. Numerous other courts, however, have upheld civil traffic  
10 violation procedures similar to those employed in this case. *See Balaban*, 2010 WL  
11 481283 at \*6-7; *Kilper v. City of Arnold*, 2009 WL 2208404 (E.D. Mo. July 23, 2009);  
12 *Sevin v. Parish of Jefferson*, 621 F. Supp. 2d 372, 383-87 (E.D. La. 2009); *Shavitz v. City*  
13 *of High Point*, 270 F. Supp. 2d 702, 717-21 (M.D. N.C. 2003); *State v. Dahl*, 336 Or. 481,  
14 488-92, 87 P.3d 650 (Or. 2004). In fact, several of those courts have upheld the  
15 government's use of a presumption that the registered owner of the vehicle was driving at  
16 the time of the violation, meaning the government is not constitutionally required to  
17 confirm the identity of the individual driving prior to initiating a civil traffic complaint.  
18 *See Kilper*, 2009 WL 2208404 at ; *Sevin*, 621 F. Supp. 2d at 383-84; *Shavitz*, 270 F. Supp.  
19 2d at 717-18; *Dahl*, 336 Or. at 490-92. In sum, no prior cases support Plaintiff's  
20 constitutional theories, and thus the Redflex Defendants are entitled to qualified  
21 immunity.

22 **IV. PLAINTIFF'S COMPLAINT DOES NOT STATE A VALID CLAIM**  
23 **AGAINST THE REDFLEX DEFENDANTS UNDER RICO.**

24 Plaintiff also alleges that the Redflex Defendants owe him treble damages under  
25 RICO. Plaintiff claims that the Redflex Defendants committed the predicate acts of mail  
26 fraud, wire fraud, and extortion by sending notice of a civil traffic violation to Plaintiff  
27 without first checking the photograph on his driver's license. The following elements are  
28 required to state a civil RICO claim: "(1) conduct (2) of an enterprise (3) through a

1 pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to  
2 plaintiff's `business or property.'" *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996)  
3 (citing 18 U.S.C. §§ 1964(c), 1962(c)). Here, Plaintiff's civil RICO claims fails because  
4 he cannot plausibly plead any of the elements.

5 **A. Plaintiff's Complaint Does Not Contain Facts Showing that the Redflex**  
6 **Defendants Committed the Predicate Acts of Mail Fraud, Wire Fraud,**  
7 **or Extortion.**

8 **1. Mail and Wire Fraud**

9 Plaintiff claims that the Redflex Defendants are guilty of mail and wire fraud in  
10 violation of 18 U.S.C. §§ 1341 and 1343. "Wire or mail fraud consists of the following  
11 elements: (1) formation of a scheme or artifice to defraud; (2) use of the United States  
12 mails or wires, or causing such a use, in furtherance of the scheme; and (3) specific intent  
13 to deceive or defraud." *Sanford v. Memberworks, Inc.*, 625 F.3d 550, 557 (9th Cir. 2010).  
14 In order to be guilty of mail or wire fraud, the individual accused must have made a  
15 material misrepresentation. *See United States v. Leveque*, 283 F.3d 1098, 1103-04 (9th  
16 Cir. 2002).

17 In the instant case, Plaintiff does not plausibly plead that the Redflex Defendants  
18 made a material misrepresentation to him. Plaintiff claims that the Redflex Defendants  
19 committed mail fraud "by knowingly and intentionally using the mails to send false  
20 certifications of traffic citations, based only on gender matches of photos and vehicle  
21 registration information, without having identified the actual driver." (*See* Complaint ¶  
22 207.) Plaintiff claims that the Redflex Defendants also committed wire fraud by posting a  
23 stationary face image of someone driving Plaintiff's van on a website called  
24 photonotice.com.<sup>4</sup> Plaintiff claims that through photonotice.com, the Redflex Defendants  
25 falsely "represent[ed] that the driver in the video and picture had been positively  
26 identified." (*See id.* at ¶¶ 222-223.)

27 Contrary to Plaintiff's allegations, neither the traffic citation nor the

28 <sup>4</sup> Photonotice.com is a website that allows those accused of traffic violations to view a picture or video of their alleged violation and to pay their notices of violation online.

1 photonotice.com website contained false statements by the Redflex Defendants.<sup>5</sup> The  
2 traffic citation, which is attached to Plaintiff's Amended Complaint as Exhibit M, merely  
3 contains statements from the City of Tempe apprising Plaintiff of his alleged violation  
4 and his rights in responding to the citation. The certification to which Plaintiff objects  
5 cannot reasonably be attributed to any of the Redflex Defendants; as the face of the  
6 citation makes clear, the certification is by Tempe Police Officer Aaron Colombe.  
7 Moreover, Officer Colombe merely certified that "upon reasonable grounds, I believe the  
8 person named herein committed the act(s) described." The fact that Officer Colombe did  
9 or did not check Plaintiff's driver's license photograph does not render his belief  
10 unreasonable or his certification false.

11 The photonotice.com web page, attached to Plaintiff's First Amended Complaint as  
12 Exhibit V, similarly contains no false statements from the Redflex Defendants. Notably,  
13 the web page does not contain the certification at the heart of Plaintiff's claims, and,  
14 contrary to Plaintiff's allegation, does not represent that the driver had been positively  
15 identified. Instead, the web page merely listed Plaintiff's name, license plate number, and  
16 citation number, along with the date and location of the alleged violation. Other than  
17 those true pieces of mundane information, the web page also contains the face image of  
18 the individual driving and a video of Plaintiff's vehicle. The picture and video are not  
19 statements, let alone *false* statements.

20 In sum, neither the traffic citation nor the photonotice.com web page contain false  
21 statements made by the Redflex Defendants. Consequently, even assuming for purposes  
22 of this Motion that Plaintiff's allegations satisfy the other elements of mail and wire fraud,  
23 Plaintiff's mail and wire fraud claims fail.<sup>6</sup>

24 \_\_\_\_\_  
25 <sup>5</sup> Because Plaintiff's traffic citation (Exhibit M) and a print out of the photonotice.com  
26 web page (Exhibit V) are attached as exhibits to Plaintiff's Complaint, the Court may  
consider their contents for purposes of this Motion to Dismiss. *See Knieval v. ESPN*, 393  
F.3d 1068, 1076 (9th Cir. 2005).

27 <sup>6</sup> Because Plaintiff cannot adequately claim a substantive violation of RICO by the  
28 Redflex Defendants, his conspiracy claim fails as well. *See Howard v. Am, Online Inc.*,  
208 F.3d 741, 751 (9th Cir. 2000) ("Plaintiffs cannot claim that a conspiracy to violate  
RICO existed if they do not adequately plead a substantive violation of RICO.").

1                   **2. Extortion.**

2           Plaintiff also claims that the Redflex Defendants are guilty of extortion in violation  
3 of 18 U.S.C. § 1951(b)(2). The Hobbs Act defines extortion as "the obtaining of property  
4 from another, with his consent, induced by wrongful use of actual or threatened force,  
5 violence, or fear, or under color of official right." *See* 18 U.S.C. § 1951(b)(2). Plaintiff  
6 claims that the Redflex Defendants aided and abetted extortion by "[t]he State actors and  
7 the City of Tempe Defendants" by "threatening to enter a default judgment, impose a civil  
8 fine, and suspend the drivers license of Daniel Gutenkauf."

9           Plaintiff's extortion claim fails for several reasons. First, there is nothing  
10 extortionate about the City of Tempe's civil traffic enforcement system, including  
11 providing alleged violators with a notice of their rights and a description of the  
12 consequences if they should fail to appear or be found responsible. Second, the U.S.  
13 Supreme Court recently held that the predicate act of extortion cannot be based on the  
14 "efforts of Government employees to get property for the exclusive benefit of the  
15 Government." *See Wilkie v. Robbins*, 551 U.S. 537, 563-64 (2007). Here, the efforts of  
16 "[t]he State actors and the City of Tempe Defendants" was for the exclusive benefit of the  
17 State of Arizona and the City of Tempe -- specifically, the government employees were  
18 merely attempting to enforce the government's traffic laws and obtain remuneration for  
19 violations thereof. They did not initiate Plaintiff's civil traffic proceedings for self gain.  
20 Because, "[t]he State actors and the City of Tempe Defendants" cannot be guilty of  
21 extortion for attempting to enforce civil traffic laws, the Redflex Defendants cannot be  
22 guilty of aiding and abetting such behavior.

23                   **B. Plaintiff's Complaint Does Not Contain Facts Establishing RICO**  
24                   **Causation.**

25           The facts contained in Plaintiff's complaint also fail to satisfy RICO's proximate  
26 causation requirement. "To have standing under civil RICO, [Plaintiff] is required to  
27 show that the racketeering activity was both a but-for cause and a proximate cause of his  
28 injury." *See Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992). Proximate

1 causation for RICO purposes requires "some direct relation between the injury asserted  
2 and the injurious conduct alleged." *Id.*

3 Here, any RICO injury Plaintiff has suffered is not a direct result of the Redflex  
4 Defendants' alleged actions. According to Plaintiff, he allowed his identical twin brother  
5 Dennis to drive his van on August 8, 2010. Thus, even if Plaintiff is correct that the  
6 Redflex Defendants are part of some grand scheme to defraud motorists by intentionally  
7 failing to check driver's license photos prior to issuing civil traffic citations, such a check  
8 would not have prevented Plaintiff from receiving his citation because the alleged driver  
9 of the vehicle looked exactly like Plaintiff. Moreover, the forms hand served on Plaintiff  
10 to initiate his proceedings included a section allowing him to identify the actual driver of  
11 the vehicle at the time of the violation. (*See* Exhibit M.) Had Plaintiff simply told the  
12 truth at that point and identified Dennis as the driver, he could have avoided any purported  
13 RICO injury. In sum, there is nothing the Redflex Defendants did to cause Plaintiff's  
14 RICO injury; the only person who could have avoided the legal proceedings underlying  
15 Plaintiff's claim is Plaintiff himself, but he chose not to do so. Consequently, the Court  
16 should dismiss Plaintiff's civil RICO claim with prejudice.

17 **V. PLAINTIFF DOES NOT HAVE STANDING OR A PRIVATE RIGHT OF**  
18 **ACTION TO SEEK A DECLARATION REGARDING REDFLEX'S**  
19 **COMPLIANCE WITH ARIZONA'S PRIVATE INVESTIGATOR**  
20 **LICENSING STATUTE.**

21 Plaintiff's last claim is a request for a declaration from the Court that Redflex is  
22 required under A.R.S. § 32-2411 to obtain a private investigator's license. That statute  
23 provides that "[a] person shall not act or attempt to act as a private investigator or  
24 represent that the person is a private investigator unless the person is registered as a  
25 private investigator." *See* A.R.S. § 32-2411(A). As Plaintiff acknowledges, the Arizona  
26 Attorney General has previously issued an opinion concluding that private investigator  
27 licensing requirement do not apply to photo-enforcement system vendors. *See* Ariz. Atty  
28 Gen. Op. I10-001 (2010). Plaintiff claims that the Attorney General's Opinion is no  
longer valid because the contract between the Arizona Department of Safety and Redflex

1 is no longer in force, and requests a declaration from this Court that Redflex must now  
2 obtain a private investigator's license.

3 Plaintiff's claim fails for lack of standing. Standing requires three elements: (1)  
4 actual or imminent injury in fact; (2) a causal connection between the injury and the  
5 conduct complained of; and (3) likelihood that a favorable decision will redress the injury.  
6 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). Here, Plaintiff has alleged  
7 no causal connection between Plaintiff's alleged injury -- the fees and costs in successfully  
8 defending against a civil traffic citation -- and Redflex's failure to obtain a private  
9 investigator's license. As explained, Plaintiff's alleged injury was caused by the fact that  
10 his identical twin was driving his vehicle at the time of the violation, along with Plaintiff's  
11 failure to identify his brother as the driver of the vehicle in his initial paperwork. Most  
12 importantly, Plaintiff does not allege that, had it possessed a private investigator's license,  
13 Redflex would have been required to positively identify the driver of Plaintiff's vehicle  
14 prior to issuing Plaintiff a traffic citation. Plaintiff also does not allege that a declaration  
15 from this Court that Redflex is required to be licensed would remedy his payment of fees  
16 and costs in defending against the citation. Plaintiff thus lacks standing to request a  
17 declaration from this Court that Redflex is required to be licensed under A.R.S. § 32-  
18 4211(A). *See Bell v. Redflex Systems, Inc.*, 374 Fed. Appx. 518, 520-22 (5th Cir. 2010)  
19 (holding that private parties did not have standing to challenge Redflex's failure to obtain  
20 a private investigator's license in Texas).

21 Plaintiff's claim similarly fails because A.R.S. § 32-2411(A) does not grant a  
22 private right of action. Arizona law only implies a private right of action when consistent  
23 with "the context of the statutes, the language used, the subject matter, the effects and  
24 consequences, and the spirit and purpose of the law." *Transamerica Fin. Corp. v. Superior*  
25 *Court*, 158 Ariz. 115, 116, 761 P.2d 1019, 1020 (1988).<sup>7</sup> The statutory scheme regulating

26 \_\_\_\_\_  
27 <sup>7</sup> Federal courts look to state law to determine whether a state statute creates a private  
28 right of action. *See Nisqually Indian Tribe v. Gegoire*, 623 F.3d 923, 931 (9th Cir. 2010)  
(looking to Washington state law to determine whether a Washington statute created an  
implied private right of action).

1 private investigators makes clear that the licensing requirement is to be enforced by the  
2 Director of the Arizona Department of Safety and the private investigator and security  
3 guard hearing board. *See* A.R.S. §§ 32-2402(A), 32-2404. Nothing about the context,  
4 language, or purpose of the private investigator statutes suggests that the Arizona  
5 legislature intended for private citizens to be able to sue to enforce the licensing  
6 requirement.<sup>8</sup>

7 **VI. CONCLUSION.**

8 For the foregoing reasons, Plaintiff does not state a viable claim against the  
9 Redflex Defendants under § 1983 or the civil RICO statute. Moreover, Plaintiff does not  
10 have standing to seek a declaration that Redflex must obtain a private investigator's  
11 license. The Redflex Defendants, therefore, respectfully request that the Court dismiss  
12 Plaintiff's First Amended Complaint with prejudice.

13 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March 2011.

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16 Phoenix, AZ 85004-2391

17 By s/ Michael S. Catlett

18 Nicole M. Goodwin  
19 Michael S. Catlett

20 *Attorneys for the Redflex Traffic Systems*  
21 *Defendants*

22  
23  
24  
25 \_\_\_\_\_  
26 <sup>8</sup> Plaintiff is also incorrect that termination of the contract between Redflex and the State  
27 requires Redflex to obtain a private investigator's license. In his Opinion, the Attorney  
28 General explained that Redflex was not required to obtain a private investigator's license  
because "a photo-enforcement system vendor does not provide a private service and is not  
available to the public to hire." *See* Ariz. Atty. Gen. Op. No. I10-001, at 4. That fact  
remains true even in the absence of an agreement between Redflex and the State.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of March, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/Frances Fulwiler