

3. **Joey Durel**, as City-Parish President of Lafayette; and
4. **REDFLEX Traffic Systems, Inc.**, a foreign company incorporated in Delaware, with its principal place of business in Scottsdale, Arizona.

2.

Jurisdiction is proper in this Court pursuant to 28 U.S.C.A. §1331 and §1367.

3.

Venue is proper in this Court pursuant to 28 U.S.C.A. §1391(b).

4.

Defendants, acting under color of law, have violated the plaintiffs' rights protected by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and the plaintiffs' rights under Art.1, §4 of the Constitution of the State of Louisiana, as well as their due process rights and civil rights, by enacting and enforcing Ordinance No. O-257-2007, Sections 86-184 through 86-190, of the Lafayette City-Parish Consolidated Government Code of Ordinances, known as the Safespeed program ("Safespeed"), and by enacting and enforcing Ordinance No. O-280-2007, Sections 86-177 through 86-183, of the Lafayette City-Parish Consolidated Government Code of Ordinances, known as the Safelight program ("Safelight"), as follows:

5.

In June of 2007, the Lafayette City-Parish Council contracted with the company REDFLEX Traffic Systems, Inc. ("REDFLEX"), for the installation of traffic cameras at various locations throughout the Lafayette City-Parish to capture images of vehicles that were either speeding (Safespeed) or violating intersectional red lights (Safelight); a mobile van with a camera was also dispatched into traffic to assist in the Safespeed program. Pursuant to said contract, it is believed

that REDFLEX was not only tasked with the installation of the traffic cameras and operation of the van, but also with the administration of the "civil" ticket collections on behalf of the Lafayette City-Parish that would result from the operation of the red light and speed cameras.

6.

Upon information and belief, in September of 2007, the Lafayette City-Parish Council adopted final forms of the Safespeed and Safelight ordinances, which were later signed into effect by Lafayette City-Parish President, Joey Durel. The Safespeed ordinance, No. O-257-2007, of the Lafayette City-Parish Consolidated Government Code of Ordinances, provides in part in Section 86-184, entitled "Definitions":

(6) *Recorded Image* means an image recorded by the System depicting the rear of a vehicle which is automatically recorded on a photograph or digital image, which also depicts the recorded speed, date, location, and time of the recorded image.

(7) *System Location* means the approach to an intersection toward which a Photographic Vehicle Speed Enforcement System is directed and in operation or a segment of roadway on which a Vehicle Speed Enforcement System is in operation. . .

Section 86-185, entitled "Imposition of civil penalty for violations enforced by a Photographic Vehicle Speed Enforcement System," provides in part (b):

(b) Except as provided in (c) and (d) below, the Owner of a vehicle is liable for a civil penalty as shown in the following tables if the vehicle is traveling at a speed in miles per hour (mph) greater than the Speed Limit as shown in the following tables at a System Location. The following civil penalties shall apply to the Owner when captured by the System in accordance with the vehicles recorded speed and the corresponding Speed Limit of the roadway where the citation was issued . . .

7.

In October of 2007, defendants began enforcing said ordinances, pursuant to their provisions, by mailing, or causing the mailing of, "civil" tickets to citizens whose vehicles were photographed by automated traffic cameras or the mobile van that captured images of said vehicles while speeding or during alleged violations of red light traffic signals. For instance, the front page of the Lafayette Safespeed Photo Enforcement Program Notice of Violation informed each class member:

The Lafayette Consolidated Government has a photo enforcement program in effect to reduce the number of speed violations, as you can see from the photos to the right, a vehicle registered in your name and described below has been photographed exceeding the speed limit.

8.

Upon information and belief, thousands of such Notices of Violation have been mailed to Louisiana residents to date, pursuant to the Safespeed and Safelight ordinances, and the actual number of those residents who have either sent in payments to satisfy the "civil" tickets, or fought against said tickets in court and lost, is within the defendants' knowledge.

9.

The named plaintiffs, as registered owners of automobiles within Louisiana, each received a Notice of Violation, directly or indirectly, by mail from the Lafayette City-Parish Consolidated Government for speeding or violating a red light, in alleged violation of the Safespeed and/or Safelight ordinances. According to each Notice of Violation, these alleged traffic violations took place within Lafayette and, hence, provided for the "civil" liability assessed against the named

plaintiffs, under the Safespeed or Safelight ordinances, as registered owners of the vehicles in question.

10.

The named plaintiffs intend to represent the class of registered owners of automobiles ticketed by the defendants for violating the Safespeed and/or Safelight ordinances since their inception. As required by Rule 23(a) of the F.R.C.P., the class of automobile owners ticketed by the defendants since the enactment of the Safespeed and Safelight ordinances would be so numerous that joinder of all class members would be impracticable. Also, as required by Rule 23(a), questions of law or fact are common to the class, and the claims asserted by the representative plaintiffs would be the same as the claims typically available to the class. Further, as required by Rule 23(a), the representative plaintiffs would fairly and adequately protect the interests of the class.

11.

In addition, Rule 23(b)(1) permits class certification because the prosecution of separate actions by individual class members would create the risk of adjudications that, as a practical matter, would be dispositive of the interests of other class members not bringing this lawsuit. Also, Rule 23(b)(2) permits class certification because the defendants have acted or refused to act on grounds generally applicable to the class of automobile owners prosecuted, so final injunctive relief and corresponding declaratory relief for the entire class would be appropriate.

12.

The named plaintiffs would be adequate representatives of the class because they have no conflict of interests, either among themselves or with the class as a whole. Indeed, the named plaintiffs simply received Safespeed and/or Safelight Notices of Violations that, on an individual

basis, exposed each plaintiff to civil fines for each alleged violation, plus administrative fees and possible court costs. Each member of the class faces or faced this same potential for liability.

13.

The Safespeed and Safelight ordinances violate the plaintiffs' right against self-incrimination protected by the Fifth Amendment because the ordinances immediately assume a plaintiff guilty, or liable, of speeding or running a red light simply because the plaintiff is the registered owner of the vehicle photographed. The Safespeed and Safelight ordinances then impermissibly place the burden of proving innocence upon the plaintiff, who must either submit an affidavit as to the identity of the offending driver or appear in court to contest the ticket, where the ordinances provide that photographs are already *prima facie* proof of the guilt of the vehicle owner. In a criminal case, the plaintiff could plead "not guilty" and then remain silent, forcing the prosecution to prove the state's case. Under the provisions of Safespeed and Safelight, however, the photographs already count as *prima facie* proof of the violation under a "preponderance of the evidence" rule, thus remaining silent under the Fifth Amendment would do nothing to convince the court that the prosecution has not carried its burden of proof. The Safespeed and Safelight ordinances therefore are impermissible attempts by the defendants to transform existing Louisiana traffic/criminal laws, namely LSA-R.S. §32:61 and §32:232 and into "civil" violations, in a manner calculated to destroy plaintiffs' Fifth Amendment rights otherwise available during criminal prosecution of a violation of either Louisiana statute. This trampling of plaintiffs' civil rights is enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

14.

The Safespeed and Safelight ordinances violate the plaintiffs' right to confront the prosecution's witnesses, as protected by the Sixth Amendment, because the "witnesses" are automated devices, and the penal ordinances are disguised as "civil" in nature. The Safespeed and Safelight ordinances therefore are impermissible attempts by the defendants to suppress the plaintiffs' Sixth Amendment rights otherwise available during criminal prosecution under Louisiana law. This trampling of plaintiffs' civil rights is enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

15.

The Safespeed and Safelight ordinances also violate the plaintiffs' constitutional rights to procedural due process protected by the Fourteenth Amendment because the ordinances immediately assume a plaintiff guilty, or liable, of speeding or running a red light simply because the plaintiff is the registered owner of the vehicle photographed. The Safespeed and Safelight ordinances then impermissibly place the burden of proving innocence upon the plaintiff, who may not have been the actual driver. Under this scheme, should the plaintiff, who received a Notice of Violation by mail, fail to take affirmative action to prove his or her innocence, or fail to pay the "civil" ticket within the time delays, he or she would face increasing fines and possible damage to his or her credit report. Worse, the Safespeed ordinance includes an additional due process hurdle, as an innocent plaintiff must both pay the fine **and an additional \$30.00 fee in order be scheduled for a hearing to prove himself innocent.** The Safespeed and Safelight ordinances are impermissible attempts by the defendants to transform existing Louisiana traffic/criminal laws, namely LSA-R.S. §32:61 and §32:232 and into "civil" violations, in a manner calculated to destroy

plaintiffs' procedural due process rights otherwise available during criminal prosecution of a violation of either Louisiana statute. This trampling of plaintiffs' civil rights is enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

16.

Furthermore, the Safespeed and Safelight ordinances violate Louisiana law because its provisions directly conflict with the uniform provisions of the Louisiana Highway Regulatory Act. Defendants' passage and enforcement of the Safespeed and Safelight ordinances, which attempt to preempt Louisiana state law in a manner that violates the plaintiffs' civil and constitutional rights, was done by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

17.

Furthermore, the Safespeed and Safelight ordinances violate established Louisiana procedural due process because their provisions allow service of a "civil" complaint and citation upon the plaintiffs through the U.S. mail, which violates the provisions of the Louisiana Code of Civil Procedure, Arts. §1232 and §1234 (regarding citation and personal service of process in civil cases), in a manner that violates the plaintiffs' civil and constitutional rights, as enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

18.

Furthermore, the Safespeed and Safelight ordinances violate the Constitution of the State of Louisiana, Art. VI, §9(A), because the ordinances impermissibly alienate the police power of the Lafayette City-Parish Consolidated Government via contract with a private entity, REDFLEX. The contract between the Lafayette City-Parish Consolidated Government and REDFLEX provides that the collection of fines for speeding and red light violations will be conducted by REDFLEX. Proof

of this allegation is contained not only in the contract, but also in the ordinances. For instance, Safespeed Section 86-186(a) provides:

(a) The Department is responsible for the enforcement and administration of Sections 86-184 through 86-190, inclusive. **The Department may enforce and administer Sections 86-184 through 86-190, or any parts thereof, through one or more contractors selected in accordance with applicable law.** The actions which can be used to enforce the payment of this civil penalty and related fees may consist of but not be limited to: immobilization of vehicles (booting), reporting the debt to collection agencies/credit reporting agencies, and/or initiating actions through the small claims court. [Emphasis added]

Likewise, Safelight Section 86-179(a) provides:

(a) The Department is responsible for the enforcement and administration of Sections 86-177 through 86-183, inclusive. **The Department may enforce and administer Sections 86-177 through 86-183, or any parts thereof, through one or more contractors selected in accordance with applicable law.** The actions which can be used to enforce the payment of this civil penalty and related fees may consist of but not be limited to: immobilization of vehicles (booting), reporting the debt to collection agencies/credit reporting agencies, and/or initiating actions through the small claims court. [Emphasis added]

Under the provisions of its Safespeed and Safelight contract with the Lafayette City-Parish Consolidated Government, REDFLEX is contractually obligated to interact with court and judicial personnel in an impermissible exercise of police power by developing the citation and subpoena process, controlling the photographic evidence, maintaining and controlling the photographic and radar equipment, controlling the coordination between the defendants and their agents, and collecting and holding fines, all of which is an impermissible exercise of police power by REDFLEX and an unconstitutional delegation of governmental authority. The effect of this delegation is to allow a private company, with a prime economic interest in enforcement

(REDFLEX's share of profit derived from the Safespeed and Safelight ordinances are based on citations paid by citizens), to control the access of information to the court, and the presentation of that information to the court.

The Safespeed and Safelight ordinances, and REDFLEX's contract with defendants, violate several existing Louisiana statutes, including LSA-R.S. §13:2571, §32:365, §32:393, §32:398, §32:398.1 and §32:398.10. Further proof of REDFLEX's illegal fine collection is found in the Notice of Violation received by each plaintiff, which provides that fines or affidavits be paid online by credit card at www.photonotice.com, a website that REDFLEX maintains and/or controls. On that website, a toll-free customer service telephone number of 1-877-847-2338 provides a recorded message prompting the caller to select the state of their traffic citation, including Arizona, California, Iowa, Ohio, North Carolina and other states wherein REDFLEX operates similar traffic camera systems. Defendants, acting under color of law, have illegally authorized REDFLEX to exercise police power over Louisiana citizens and deprive their civil rights, in violation of 42 U.S.C.A. §1983, and all fines and monies paid by the plaintiff class members to REDFLEX, which remain in REDFLEX's possession and/or control, must be returned.

19.

The Federal Highway Administration's 2003 Manual on Uniform Traffic Control Devices (MUTCD) Edition was adopted by Louisiana in 2005 through the Chief Engineer for the Louisiana Department of Transportation and Development; Louisiana adopted the MUTCD with no State supplement and no exceptions. Chapter 4D, Section 4D.10 of the MUTCD, entitled "Yellow Change and Red Clearance Intervals," provides in part:

A yellow change interval should have a duration of approximately 3 to 6 seconds. The longer intervals should be reserved for use on approaches with higher speeds.

Upon information and belief, defendants have authorized REDFLEX to calibrate and/or recalibrate the timing of traffic lights at "system locations" throughout Lafayette so as to shorten the duration of the yellow caution lights listed in the MUTCD, with the primary intention of causing more vehicles to be photographed violating the red lights at said "system locations," in violation of public policy, the Constitution of the State of Louisiana, and the MUTCD as adopted by Louisiana. Defendants' deleterious conduct herein, the primary purpose of which was to separate citizens from their property via "civil" citations, was committed under color of law, in violation of 42 U.S.C.A. §1983.

20.

Furthermore, the Safespeed and Safelight ordinances violate the Constitution of the State of Louisiana, Art. VI, §9(B), because the ordinances impermissibly attempt to govern civil relationships.

21.

Furthermore, the application of the Safespeed and Safelight ordinances violate La. C.E. Art. 505, regarding the spousal witness privilege.

22.

The aforementioned actions of the defendants, in concert, have caused the plaintiffs, and the putative class of plaintiffs, actual damages insofar as some class plaintiffs have paid the "civil" fines, others have risked prosecution by refusing to pay, others have gone to court to fight the fine

only to be assessed administrative and/or court costs on top of the fines. All of the putative class members share the same issue of law and fact, i.e., the Safespeed and Safelight ordinances violate their rights to procedural due process as set forth above, and defendants, acting in concert, have violated these constitutional and civil rights while acting under the color of law. Therefore, plaintiffs are seeking all actual monetary damages they incurred and paid as a result of receiving a Notice of Violation under Safespeed and/or Safelight, whether said money is in the possession of the Lafayette City-Parish Consolidated Government, the Lafayette City-Parish Council, Joey Durel, as City-Parish President of Lafayette, REDFLEX or any other entity or agent under these defendants' control, all damages allowed under 42 U.S.C.A. §1983, including punitive damages, damages for negligent and/or intentional infliction of emotional distress upon the class members, the striking of the Safespeed and Safelight ordinances as unconstitutional and/or in violation of Louisiana law, and any and all other relief available in justice and equity.

WHEREFORE, plaintiffs, Stephanie Ware and Phil Abshire, pray that the defendants be duly cited to appear and answer this Complaint and after all legal delays and due proceedings had, that there be judgment rendered herein in favor of the plaintiffs and against the defendants, the Lafayette City-Parish Consolidated Government, the Lafayette City-Parish Counsel, Joey Durel, as City-Parish President of Lafayette and REDFLEX Traffic Systems, Inc., together *in solido*, in a full and true sum reasonable under the circumstances for all damages, general, special and punitive, together with legal interest thereon from the date of judicial demand, until paid, and for all costs of

these proceedings and all general and equitable relief required or necessary in the premises.

Respectfully submitted,

JOSEPH R. McMAHON, III, #21769, T.A.
ANTHONY S. MASKA, #25163
110 Ridgelake Drive
Metairie, Louisiana 70001
Telephone: (504) 828-6225
Facsimile: (504) 828-6201
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the above was sent to all parties via U.S. Mail and that summons to all parties will be issued pursuant to the F.R.C.P.