

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR FLAGLER COUNTY, FLORIDA

CIVIL ACTION NO.: 2009 CA 002245

WILLIAM G. MAYFIELD,
on behalf of himself and all
other persons similarly situated,

Plaintiff,

v.

CITY OF PALM COAST,
AMERICAN TRAFFIC
SOLUTIONS, LLC, and
ATS AMERICAN TRAFFIC
SOLUTIONS, INC.,

Defendants.

FILED IN THE OFFICE
CLERK OF COURT
FLAGLER COUNTY, FLA.
2009 AUG 25 PM 2:59
BY _____
PAPER NO. _____

**CLASS ACTION COMPLAINT FOR CIVIL DAMAGES,
DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW, the Plaintiff, WILLIAM G. MAYFIELD, by and through his undersigned attorneys, brings this Complaint, on behalf of himself and all other persons similarly situated, to obtain declaratory and injunctive relief, civil damages, costs of suit, and attorneys' fees from the Defendants, pursuant to Florida Rule of Civil Procedure 1.200. Plaintiff complains and alleges, upon information and belief, as follows:

NATURE OF ACTION

1. This is a class action brought by vehicle owners within and outside the State of Florida who have received citations for red-light traffic violations pursuant to CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled "Traffic Light Safety" (hereinafter "The Program").

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2. Pursuant to the above Ordinance, CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled “Traffic Light Safety”), and upon issuance of these traffic citations, The CITY OF PALM COAST (hereinafter “The City”) informed the Plaintiff, WILLIAM G. MAYFIELD, and all other persons similarly situated that they were presumed guilty by reason of their ownership of the vehicle involved and that it was their burden to prove that they were not driving the vehicle at the time of the offense. Ultimately, each of the Plaintiffs was cited for an infraction, convicted by guilty plea or other case disposition and/or paid fines, surcharges, costs and fees, and suffered other adverse legal and financial consequences.

3. The above course of conduct that the City engaged in is in violation of the U.S. Constitution, the Constitution of the State of Florida and statutory law.

4. On or about February 8, 2009, at 1:52 p.m., Plaintiff’s vehicle (FL License Plate # GRD2M) was cited by Defendant’s camera for running a red light at or near N.B. Cypress Point Parkway/Boulder Rock Drive at Palm Coast Parkway, within the CITY OF PALM COAST, in violation of CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled “Traffic Light Safety”. The Notice of Violation fails to specify the identity of the vehicle operator.

JURISDICTION AND VENUE

5. Jurisdiction in this Court is proper pursuant to Florida Statutes §26.012 and §§86.011, 86.021, 86.051, 86.101. This Court has jurisdiction over Defendants, AMERICAN TRAFFIC SOLUTIONS, LLC, and ATS AMERICAN TRAFFIC SOLUTIONS, INC. (hereinafter “Companies”) because the Companies have sufficient minimum contacts with the State of Florida, Flagler County, and the CITY OF PALM COAST, and they intentionally availed themselves of the consumers or markets within the State of Florida, and more specifically,

Flagler County. The acts complained of herein occurred in the State of Florida. Plaintiff seeks declaratory, injunctive relief and civil damages.

6. Venue is proper in this Court pursuant to Florida Statutes §§47.022, 47.021, and 47.041. Venue is proper in this Court because all transactions complained of herein occurred within the State of Florida. The Companies have received substantial compensation from the sale for their automated traffic safety camera services in the CITY OF PALM COAST, which is located in Flagler County. Defendants do business here and have committed unfair and improper business practices, which conduct and practices have had a profound effect on the Plaintiffs and the public's trust in government.

7. That at all times material hereto, the Defendant, AMERICAN TRAFFIC SOLUTIONS, LLC, was and is an Arizona Corporation, authorized to do business and doing business in Flagler County, Florida, with its principle office located in Scottsdale, Arizona. As a result of its business activities in the State of Florida, and its many sundry activities related to the consumer industry, Defendant, AMERICAN TRAFFIC SOLUTIONS, LLC is subject to the jurisdiction of the Courts of Florida pursuant to the provisions of Florida Statute 48.081, 48.181, and 48.193.

8. That at all times material hereto, the Defendant, ATS AMERICAN TRAFFIC SOLUTIONS, INC., was and is an Arizona Corporation, authorized to do business and doing business in Flagler County, Florida, with its principle office located in Scottsdale, Arizona. As a result of its business activities in the State of Florida and its many sundry activities related to the consumer industry, Defendant, ATS AMERICAN TRAFFIC SOLUTIONS, INC. is subject to the jurisdiction of the Courts of Florida pursuant to the provisions of Florida Statute 48.081, 48.181, and 48.193.

9. That at all times material, Defendant Companies, continuously and systematically engaged in the business of designing, manufacturing, testing, assembling, planning, engineering, constructing, building, inspecting, marketing, advertising, distributing and/or selling traffic control signal monitoring devices, including the subject traffic control signal monitoring device, to be used to monitor and cite the general public, including the Plaintiff, WILLIAM G. MAYFIELD, a foreseeable vehicle owner subject to said traffic control signal monitoring devices. The above Companies actions were done for profit and said companies received a portion of the assessed fine against Plaintiff and all other persons similarly situated. At all times material, the Defendants operated jointly to deprive the plaintiff and class of their legal and constitutional rights in clear contravention of Florida and Federal law.

BACKGROUND

10. On January 8th, 2008, the CITY OF PALM COAST enacted an ordinance to enable the City to use unmanned, automated cameras at traffic lights to photograph vehicles who fail to obey red lights, and to provide for the issuance of municipal traffic citations for photographed violations.

11. The ordinance is entitled "Traffic Light Safety", and is codified in the CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled "Traffic Light Safety". True and correct copies of these sections are attached hereto and incorporated herein as Composite Exhibit "A".

12. Under the Program, automated cameras watch various red lights throughout the CITY OF PALM COAST, and municipal traffic citations are issued when vehicles are photographed violating red lights.

13. Defendant, CITY OF PALM COAST, has enacted and enforced, and presently seeks to continue to enforce an ordinance pursuant to which vehicle owners whose vehicle's are

photographed on Red Light cameras are allegedly committing a red zone infraction violation (failure to stop at a red light – moving violation due to car not stopping) are issued Notice of Violations for at least \$125.00, even though such alleged red zone infractions are not personally witnessed by a sworn law/traffic enforcement officer as required by Florida Statute Section 316.640(5)(a). (A copy of the Ordinance is attached hereto as Exhibit “A”.)

14. These citations are issued pursuant to the city ordinances, rather than state law, and are entirely different from the Uniform Traffic Citations commonly issued by police officers for traffic infractions.

15. Citations under the Program are issued to the registered owner of the vehicle, rather than the driver, and mailed to the owner’s address. The owner remains liable even if the owner was not driving, unless the owner can prove, by sworn affidavit that the driver was in possession of the vehicle without the owner’s consent; received a citation from a law enforcement officer; was forced to comply with other governing laws; was forced to protect another person or property; the signal was malfunctioning or other good cause.

16. Such citations carry fines as follows: \$125.00 for the first and any subsequent violations.

17. Chapter 166 of the Florida Statutes set out the powers of municipalities generally, and for the CITY OF PALM COAST, specifically, to enable the CITY OF PALM COAST to conduct municipal government, perform municipal functions, and render municipal services. However, Chapter 166 imposes limitations upon those powers and does not allow exercise of power that is expressly prohibited by law, the constitution, or preempted to the State. Further, a municipality, generally, and the CITY OF PALM COAST, specifically, under taxing and charging authority may not enforce receipt and collection in a manner inconsistent with law. See Sections 166.021 and 166.201, Fla. Stat., 2008.

18. Chapters 162, of the Florida Statutes creates the rules and system for Municipal Code Enforcement for municipalities, generally and the CITY OF PALM COAST, specifically.

19. Chapter 34, Florida Statutes, 2009, defines the County Court segment of the Florida Judiciary. It is primarily the County Courts of this State that handle and resolve civil traffic infractions in the State and they do so by and through the procedures found, in part, in the Florida Rules of Traffic Court, Rule 6.010 et seq., F.R.Tr.C. (2009).

20. Chapter 316 of the Florida Statutes creates the “State Uniform Traffic Control Act” for the State of Florida. At all times material Chapter 316, Fla. Stat. has the full force and effect of law. Florida Statute, Section 316.002, entitle, “Purpose”, states:

“The legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions. **This section shall be supplemented to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.**” (Emphasis Added).

21. Furthermore, Florida Statutes, Section 316.640, “Enforcement” provides:

“The enforcement of the traffic laws of this state is vested as follows:

(5)(a) Any sheriff’s department or police department of a municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes instruction in traffic enforcement procedures and core representation through the selective traffic enforcement program as approved by the Division of Criminal Justice standards and training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the criminal justice standards in training commission for law enforcement officers or auxiliary law enforcement officers under Section 943.13. **Any such traffic enforcement officer who observes the commission of a traffic infraction** or, in the case of a parking infraction, who observes an illegally parked vehicle, **may issue a traffic citation for the infraction when, based upon personal investigation**, he or she has reasonable and probably grounds to believe that an offense has been committed which constitutes a non-criminal traffic infraction as defined in Section 318.14.” (Emphasis Added).

22. The Florida legislature specifically regulates, “Traffic Control Signal Devices” pursuant to Florida Statutes, Section 316.075, which states in patient part:

(1) Except for automatic warning signal lights installed or to be installed at railroad crossings, whenever traffic, including municipal traffic, is controlled by traffic signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(c) Steady red light indication –

1. Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, the before entering the intersection and shall remain standing until a green indication is shown; however:

a. The driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersection roadway before entering the intersection in obedience to a steady red signal, may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by this signal at the intersection, except that municipal and county authorities may prohibit such right turn against a steady red signal at any intersection, which prohibition shall be effective when a sign giving notice thereof is erected in a location visible to traffic approaching the intersection.

23. Furthermore, Florida Statutes, Section 316.075(4) mandates:

“A violation of this section is a **non-criminal traffic infraction**, punishable pursuant to Chapter 318, Florida Statutes, as either a pedestrian violation or, if the infraction resulted from the operation of a vehicle, as a **moving violation**.” (Emphasis Added).

24. Florida Statutes, Section 316.650, “Traffic citation”, explains:

The Department (“DMV”) shall prepare and supply to every traffic enforcement agency in the state an appropriate form traffic citation that contains a notice to appear, is issued in pre-numbered books, meets the requirements of this chapter or any laws of this state regulating traffic, and is consistent with the state traffic

court rules and the procedures established by the department... The form shall also include a box that is to be checked by the law enforcement officer when the officer writes a uniform traffic citation for a violation of Section 316.074(1) or **Section 316.075(1)(c)(1)** as a result of the driver failing to stop at a traffic signal. (Emphasis Added).

25. Pursuant to Florida Statutes, Section 316.650(3)(a):

“except for a traffic citation issued pursuant to Section 316.1001 [toll payment], each traffic enforcement officer, upon issuing a traffic citation to alleged violator of any provision of the motor vehicle laws of this state or any traffic ordinance of any municipality or town, shall deposit the original traffic citation or, in the case of a traffic enforcement agency that has an automated citation issuance system, the chief administrative officer shall provide by an electronic transmission a replica of the citation dated to a court having jurisdiction of the alleged offense or with its traffic violations bureau within five (5) days after issuance to the violator.”

26. Florida Statutes, Chapter 318 is entitled, “Florida Uniform Disposition of Traffic Infractions Act”.

27. Florida Statutes, Section 318 provides, “Amount of Penalties.” Pursuant to Florida Statute, Section 318.18(15):

One hundred twenty-five dollars for a violation of s.316.074(1) or s.316.075(1)(C)1 when a driver has failed to stop at a traffic signal. Sixty dollars shall be distributed as provide in s.318.21, and the remaining \$65 shall be remitted to the Department of Revenue for deposit into the Administrative Trust Fund of the Department of Health.

28. On July 12, 2005, the Office of the Attorney General, State of Florida, the Honorable Charlie Crist, issued Attorney General Opinion 200-41, which specifically addressed whether or not the City of Pembroke Pines could enact an ordinance authorizing the City to monitor violations of traffic signals within the city using unmanned cameras to monitor intersections and record traffic violations. Attorney General Crist explained a City may use photographic evidence from unmanned cameras to advise a car owner of a violation, however, a City may not use electronic traffic

infraction detectors independently as a basis for issuing citations for violations of traffic laws. The Attorney General aptly noted,

“the provisions of the Uniform Traffic Code require that citations be issued when an officer ‘observes the commission of a traffic infraction.’ Thus, in order for citations for violations of traffic control laws to be issued, the statutes appear to require that an officer enforcing the traffic law personally observe or have personal knowledge of the particular infraction that serves as the basis for issuing the citation. The opinion concluded that nothing precludes the use of unmanned cameras to record violations of Section 316.075, Florida Statutes, but if it’s photographic record of vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations. This office has suggested that legislative amendments would be necessary to allow the photographic record from unmanned cameras monitoring intersections be used as the sole basis for issuing citations.”

As of the present date, the Florida legislature has not amended Florida Statutes, Section 316.075.

29. Any person issued such a citation must respond within twenty-one (21) days, after which such person is deemed to have admitted the offense and deprived of the right to contest it.

30. Individuals who elect to contest such citations are heard in city hall before a hearing board, rather than a Flagler County Court.

FACTS

31. Plaintiffs, by and through their attorneys of record, file this Complaint on behalf of themselves and all persons similarly situated within the State of Florida. Plaintiffs make their allegations upon personal knowledge as to themselves and their own acts, and upon information and belief based on investigation of counsel as to all other matters, as set forth below.

32. All known contracts for traffic signal cameras in Florida involve a municipality hiring or utilizing American Traffic Solutions LLC and/or ATS American Traffic Solutions, Inc. Collectively, these companies issue thousands of red light tickets per month. In most jurisdictions these companies literally issue the tickets and collect the fines: they superimpose

the electronic signature of a City law enforcement officer or designee, they print notices of infraction at their out-of-state offices, they mail the tickets to the alleged violators, and they collect the payments at an address located outside Florida.

33. This matter involves the unfair and illegal practices of the Defendants, CITY OF PALM COAST, American Traffic Solutions, LLC and ATS American Traffic Solutions, Inc., whose acts constitute unlawful business and reprehensible public policy practices. These practices have resulted in the Defendants' unjust enrichment, which is due to conversion of property belonging to Plaintiffs.

CLASS REPRESENTATION ALLEGATIONS

34. Pursuant to Florida Rule of Civil Procedure, 1.220, Plaintiffs bring this action both individually and on behalf of all who have been cited by the City for violations stemming from evidence obtained via an automated traffic control signal monitoring device owned and operated by the Companies, and thus subjected to the Companies' wrongful billing practices and unlawful prosecutions. Alternatively, Plaintiffs bring this action on behalf of themselves and such subclasses that this Court deems appropriate (collectively "subclasses").

35. The class consists of: All persons who were cited by the City for violations that did not comport with the clear requirements of Chapter 316, 318 or Florida Statutes identified herein.

36. Plaintiffs' beliefs are based on the fact that:

a. Defendant, CITY OF PALM COAST, issued numerous violations or a number of traffic violations;

b. That each traffic violation fails to comply with Florida Statutes and/or Chapter 316, or 318;

c. That Defendant regularly violates Chapter 316 and/or 318;

d. The members of the class will be easily ascertainable from the records of the Defendant, CITY OF PALM COAST, when discovery commences.

37. The class and the subclass of persons described above are so numerous that the joinder of all members in one action is impracticable. Upon information and belief, Plaintiffs estimate that there are many thousands of class members or more.

38. Questions of fact and law common to the entire class and subclasses predominate over individual questions because the actions of the Defendants complained of herein were generally applicable to the entire class and subclass, as identified within this Complaint.

39. Class Representatives raise questions of law that are common to the claims of each member of the class. Specifically, the central issues raised by this action are whether the Defendant illegally issued traffic citations in violation of Chapter 316 and/or 318, Florida Statutes, the Florida Constitution, the U.S. Constitution or other grounds identified within this Complaint.

40. All questions as to the representations and improper business and prosecution practices of the Defendants and the impacts thereof are similarly common. Common questions include, but are not limited to, Defendants' practices with respect to the Class and subclasses.

41. The claims of Plaintiffs are typical of the claims of the class and subclasses in that the Plaintiffs and each class member received a citation via a mailing from the Companies, issued on behalf of the City, many of whom paid fines. Plaintiffs and all class and subclass members suffered similar damages resulting from Defendants' actions.

42. Plaintiffs, Class Representatives, are Florida residents who will fairly and adequately represent and protect the interests of the entire class or subclass because of the common injuries and interests of the class and subclass members and the common conduct of Defendants applicable to all class and subclass members. The Class Representatives are fully

cognizant of their responsibilities as Class Representatives, and Plaintiffs have retained competent counsel, who are experienced in the prosecution of class action litigation and who have no interest that are contrary to, or in conflict with, those of the class or subclass they seek to represent.

43. The Defendants have acted and refused to act on grounds generally applicable to the entire class or subclasses thereby making it appropriate for this Court to grant final injunctive and declaratory relief with respect to the class and subclass as a whole.

44. A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that precludes its maintenance as a class action.

45. The prosecution of separate actions by individual class or subclass members will create a risk of inconsistent and varying adjudications concerning individual members of the class or subclass which would, as a practical matter, be dispositive of the interests of other members of the class or subclass who are not parties to the adjudication or substantially impair or impede the ability of other members of the class or subclass who are not parties to the adjudications to protect their interests, which adjudication could establish incompatible standards of conduct of Defendants under the laws alleged herein. Although City's municipal court offers a contested hearing proceeding as an optional remedy available to contest the citation for an automated traffic safety camera violation, the municipal court is not authorized to issue injunctive relief, nor is the municipal court authorized to hear class actions. This Court has jurisdiction over this class action involving wrongfully issued citations from a municipality and a municipal court, and it may award damages as well as an injunction.

46. Plaintiff's claims and all other persons similarly situated against the Defendants are typical and common of the claims asserted against the individually named Defendants. The defenses to the Plaintiffs' claims that could be raised by the Defendants are typical.

47. The common questions of law and fact raised by the Plaintiffs' claims against the Defendants and raised by possible defenses that could be asserted by the Defendants predominate over any issues relating to individual members of the Plaintiff Class.

48. The Defendants have acted in a manner that is common to all Plaintiffs and members of the Plaintiff Class making permanent injunctive and equitable relief appropriate against the Defendants.

**CHALLENGE TO ORDINANCE – PREEMPTION UNDER THE FLORIDA
UNIFORM TRAFFIC CONTROL LAW**

49. The "Traffic Light Safety" Program is an invalid exercise of municipal power because it purports to legislate in an area of law that has been preempted by the state legislature.

50. The Florida Uniform Traffic Control Law, as embodied in Chapter 316, Florida Statutes, expressly preempts the entire area of traffic control legislation.

51. Section 316.002, Florida Statutes, provides that "[i]t is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities," and further states that "[i]t is unlawful for any local authority to pass or to attempt to enforce any ordinances in conflict with the provisions of this chapter."

52. Florida Statutes Section 316.008 provides that "[t]he provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinances on a matter covered by this chapter unless expressly authorized..."

53. Florida Statutes Sections 316.074 and 316.075, set forth the law regarding red light violations, and the legislature has declined to authorize municipalities to enact local laws on the subject, through Florida Statute Section 316.008.

54. Notwithstanding this, the CITY OF PALM COAST enacted the “Traffic Light Safety” Program, which contains extensive provisions regarding the observance of red light signals, which conflicts with the provision of Chapter 316, Florida Statutes in the following ways:

- a. By altering the burden of proof required under Florida Statutes;
- b. By altering the fine schedule under Florida Statutes;
- c. By altering procedural and substantive due process under Florida law; and
- d. By failing to follow Florida Statutes for proof of violation of a traffic control signal.

55. Accordingly, the “Traffic Light Safety” Program is an invalid exercise of municipal power, and must be struck down.

56. The Defendants are jointly and severally liable for the violation.

**CHALLENGE TO ORDINANCE – PREEMPTION UNDER THE FLORIDA UNIFORM
DISPOSITION OF TRAFFIC INFRACTIONS ACT**

57. The “Traffic Light Safety” Program is an invalid exercise of municipal power because it purports to legislate in an area of law that has been preempted by the legislature.

58. The Florida Uniform Disposition of Traffic Infractions Act, as embodied in Chapter 318, Florida Statutes, preempts the area of law pertaining to the disposition of traffic infractions.

59. Notwithstanding this, the CITY OF PALM COAST enacted the “Traffic Light Safety” Program ordinance, which includes a system for enforcing and disposing of traffic infractions.

60. The system embodied in the Program is different from, and in conflict with, the system provided by the legislature in Chapter 318, Florida Statutes:

- a. The Program alters the fine schedule under Florida Statutes;
- b. The Program allows for a higher fine than is allowed under Florida Statutes;
- c. The program mandates a graduated fine system for committing the same offense;
- d. The program illegally prohibits the violator from maintaining city permits or licenses or utilize municipal facilities.

61. Further, Florida Statutes Section 318.121 expressly preempts the enhancement of fees, fines, surcharges, and costs of traffic infractions: “Notwithstanding any general or special law, or municipal or county ordinances, additional fees, fines, surcharges, or costs other than the court costs and surcharges assessed under Section 318.18(11) and (13) may not be added to the civil traffic penalties assessed in this chapter.” Fla. Stat. § 318.121.

62. Florida Statutes Section 318.18(15) sets forth the civil penalty for failure to observe a red light: “[o]ne hundred twenty-five dollars for a violation of Section 316.074(1) or Section 316.075(1)(c)1. when a driver has failed to stop at a traffic signal....”

63. In contrast, the Program sets the civil penalty for running a red light at \$125.00 but allows for administrative costs.

64. This schedule directly conflicts with state law, Florida Statute Section 318.121 expressly prohibits municipalities from enhancing fine amounts for traffic violations.

65. Accordingly, the “Traffic Light Safety” Program is an invalid exercise of municipal power, and must be struck down.

66. The Defendants are jointly and severally liable for the violation.

COUNT I – VIOLATION OF FEDERAL CIVIL RIGHTS ACT 42 U.S.C. § 1983

67. The Plaintiff(s) reallages paragraphs 1 through 66 above as if hereinafter set forth in full.

68. The express language of the “Traffic Light Safety” Program provides for the denial and deprivation of Plaintiffs’ and Plaintiff Class members’ rights to due process under the Florida and U.S. Constitutions, including the right to be presumed innocent of a criminal or traffic offense and a right to be proven guilty beyond a reasonable doubt by the State of Florida.

69. Upon information and belief, it is the policy, custom and practice of the Defendants, upon receipt of notification that a person had been convicted of a moving traffic violation under the City's “Traffic Light Safety” Program, to: 1) collect a fine, surcharge, cost and fee from such persons.

70. Upon information and belief, it was the uniform policy, custom, practice, pattern, and/or usage of the CITY OF PALM COAST to inform individuals that, in order to avoid liability for any traffic citations issued pursuant to the “Traffic Light Safety” Program, they must prove: that they were not the driver of the vehicle at the time of the infraction, that they were simultaneously issued a citation by a law enforcement officer, that they were required to violate the device to protect property or person, that they were required to violate the device to comply with governing law, or that the device was inoperative or malfunctioning. This impermissibly shifts the burden of proof. This provision of legal information and advice by the City was false, misleading and deceptive; intended by the City to be relied on by the accused in determining how to plead to the charges; induced class members

to act to their legal detriment; and constitutes a violation of Plaintiffs' and Plaintiff Class members' rights to property and due process of law under the Fourth, Fifth and/or Fourteenth Amendments to the U.S. Constitution, the Florida Constitution, as well as a violation of Florida case law.

71. The aforesaid and other alleged actions were taken by the Defendants under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the CITY OF PALM COAST within the meaning of the Federal Civil Rights Act, 42 U.S.C. § 1983.

72. Upon information and belief, it is the policy, custom and practice of the Defendants' "Traffic Light Safety" Program, to receive a portion of all fines, surcharges, costs and fees paid by the accused and to retain such monies in perpetuity despite an absence of any legal basis or legal authority for retention of the same.

73. As a result of the above-described conduct, Plaintiffs and members of the Plaintiff Class have been deprived of their property and liberty rights without due process of law and, upon information and belief, have been injured thereby in an amount yet to be determined.

WHEREFORE, pursuant to 42 U.S.C. § 1983, Plaintiffs on their behalf and on behalf of the Plaintiff Class claim all damages together with interest thereon at 8% per annum that they are entitled by law to recover from the Defendants, CITY OF PALM COAST, for the legal deprivations, injuries and losses set forth herein, which deprivations, injuries and losses were caused by said Defendant acting under color of law in violation of Plaintiffs' and Plaintiff Class members' constitutional rights, including, but not limited to restitution, attorneys' fees and costs, and further demands trial by jury.

COUNT II – UNJUST ENRICHMENT

74. The Plaintiff(s) reallages paragraphs 1 through 66 above as if hereinafter set forth in full.

75. As a result of the conduct described above, the Defendants have been and will continue to be unjustly enriched at the expense of the Plaintiffs and members of the class and subclasses. Specifically, the Defendants have improperly billed and/or been paid by the Plaintiffs for citations which were issued under the color of State and municipal law.

76. The Defendants should be required to disgorge their unjust enrichment by the Court's powers of equity.

77. The Defendants are jointly and severally liable for the violation.

WHEREFORE, Plaintiff, WILLIAM G. MAYFIELD, and all other persons similarly situated, demands judgment for damages in excess of Fifteen Thousand Dollars (\$15,000.00), including, but not limited to, the return of fines paid and costs, interest, and further demands trial by jury.

COUNT III – TORT OF CONVERSION

78. The Plaintiff(s) reallages paragraphs 1 through 66 above as if hereinafter set forth in full.

79. By their actions described above, the Defendants have converted the Plaintiffs' property (money), in the unjustified, willful interference with property of the Plaintiffs (i.e. money) which deprives a person entitled to the property of possession.

80. The Defendants should be required to disgorge their improperly converted profits by the Court's powers in equity.

81. The Defendants are jointly and severally liable for the violation.

WHEREFORE, Plaintiff, WILLIAM G. MAYFIELD, and all other persons similarly situated, demands judgment for damages in excess of Fifteen Thousand Dollars (\$15,000.00), including, but not limited to, the return of fines paid, costs, interest, and further demands trial by jury.

**COUNT IV – MALICIOUS PROSECUTION/
ABUSE OF PROCESS**

82. The Plaintiff(s) realleges paragraphs 1 through 66 above as if hereinafter set forth in full.

83. This cause of action is alleged against the Defendant Companies only. By their actions described above, the Defendant Companies engaged in the torts of abuse of process, by using the judicial system's process, whether criminal or civil, made available to insure the presence of the Plaintiffs or his/her property in court, and have been misused to achieve another, inappropriate end, namely the primary motive of financial profit to both the City and the Company, rather than the legitimate aim of achieving public safety, punishing unlawful behavior, and achieving remedial benefits.

84. The Defendant Companies acted with malice and engaged in a course of conduct whereby they knew, or should have known, that they were unlawfully depriving the citizens of this State and elsewhere of money, and it was intentional and motivated by greed and profit.

85. Further, Plaintiffs allege that Defendant Companies instituted a false action against Plaintiffs without cause for the case, that Defendant Companies acted with malice, that Defendant Companies won their case by collecting money from Plaintiffs, and that Plaintiffs suffered injury and damages because they were deceived into paying Defendant Companies money based on a letter indicating an infraction case was pending against Plaintiffs when no

such lawful case was actually pending because of the illegal actions of the Defendants' described herein.

86. The Defendants are jointly and severally liable for the violation.

WHEREFORE, Plaintiff, WILLIAM G. MAYFIELD, and all other persons similarly situated, demands judgment for damages in excess of Fifteen Thousand Dollars (\$15,000.00), including all income, interest, and profits of Defendant Companies, AMERICAN TRAFFIC SOLUTIONS, LLC, and ATS AMERICAN TRAFFIC SOLUTIONS, INC., and further demands trial by jury.

COUNT V – INJUNCTIVE AND DECLARATORY RELIEF

87. The Plaintiff(s) reallages paragraphs 1 through 66 above as if hereinafter set forth in full.

88. Plaintiffs bring this cause of action pursuant to Florida Statutes, Section 86.011, for a judgment declaring the above cited Ordinance to be unconstitutional, preempted by Florida State Statutes and/or an improper delegation of municipal authority.

89. Pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and Florida Statute Section 85, the Plaintiffs are entitled to declaratory relief, pursuant to Chapter 86 of Florida Statutes, that the Defendants are engaging into contracts prohibited by law, issuing infractions prohibited by court rule and State law, and collecting fines and fees assigned contrary to state and municipal codes. Further, Defendants have unjustly been enriched and have engaged in conversion, such that Plaintiffs are entitled to a temporary restraining order and an injunction forcing Defendants to permanently halt their improper and illegal contractual arrangements and charging methods and remedy such past acts with various measures.

WHEREFORE, Plaintiff, WILLIAM G. MAYFIELD, and all other persons similarly situated, requests that this Court issue an injunction which prohibits further enforcement of the

above named Ordinance, CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled “Traffic Light Safety”, and halting further illegal activity.

REQUEST FOR RELIEF

The Plaintiffs request the Court award to them the following relief:

90. Economic, compensatory, and general damages on behalf of all members of the Plaintiff class and the subclass.

91. The equitable remedy of Restitution from all Defendants.

92. That the City be found to have deprived the plaintiff and the plaintiff class of their liberty and property rights in violation of 42 U.S.C. 1983.

93. The equitable remedy of Declaratory and injunctive relief against Defendants from further making such improper prosecutions and unlawful citation and billing practices as alleged herein.

94. On the facts of the case, Plaintiffs are in doubt as to their rights and the rights of all other purported class members under Florida Statute Chapters 316, 318 and/or the U.S. Constitution and/or the Florida Constitution.

95. Reasonable attorneys’ fees and reimbursement of all costs for the prosecution of this action, based upon the creation of a common fund/common benefit recovery, and based upon other theories and statutory bases.

96. Injunctive relief enjoining the City and the Company from issuing any further Notice of Traffic Infraction under CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled “Traffic Light Safety”, in the City until the procedures utilized by both are brought into compliance with all state laws.

97. A declaratory judgment declaring that the Defendants' unlawful business practices and the City's unlawful and improper prosecution of registered owners of vehicles traveling through the City violate the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution and the Constitution of the State of Florida.

98. That the CITY OF PALM COAST Code of Ordinances, Article III, Sections 38-81 through 38-95 (Ord. No. 07-585, Section 70-81 through 70-95, 1-8-2008), entitled "Traffic Light Safety" be declared unconstitutional as applied to plaintiff and members of the plaintiff class.

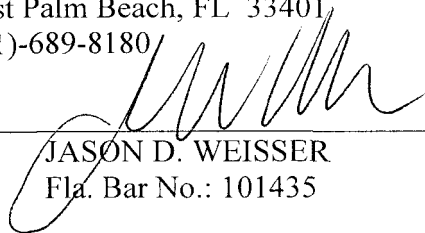
99. Pre-judgment and post-judgment interest on the damages claims against the Defendant Companies only.

100. That the court determine and order that this action may proceed as a class action and certify a class either as described above or as otherwise found by the to be appropriate.

101. Such other relief as the Court may deem equitable and just.

Dated this 24th day of August, 2009.

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ARTICLE III. TRAFFIC LIGHT SAFETY**Sec. 38-81. Purpose and intent.**

The purpose of this article is to authorize the use of an unmanned cameras/monitoring system to promote compliance with red light signal directives as proscribed by this article, and to adopt a civil enforcement system for red light signal violations. This article will supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with normal statutory traffic enforcement techniques.

(Ord. No. 07-585, § 70-81, 1-8-2008)

Sec. 38-82. Use of image capture technologies.

The city shall utilize image capture technologies as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state laws related to red light signal violations or conflict with such laws. The city shall utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. Notices of violations issued pursuant to this article shall be addressed using the city's own hearing officer and not uniform traffic citations or county courts.

(Ord. No. 07-585, § 70-82, 1-8-2008)

Sec. 38-83. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hearing officer means the city's special magistrate.

Intersection means the area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two roads which join or intersect one another at, or approximately at, right angles, or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

Motor vehicle means any self-propelled vehicle not operated upon rails or a guideway, but not including any bicycle, motorized scooter, electric personal assisted mobility device, or moped.

Notice of infraction means a citation issued for a red zone infraction, which shall be issued a notice of violation.

Owner/vehicle owner means the person or entity identified by the state department of motor vehicles, or other state vehicle registration office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.

Recorded images means images recorded by a traffic control signal monitoring system/device:

- (1) On:
 - a. Two or more photographs;



- b. Two or more electronic images;
- c. Two or more digital images;
- d. Digital or video movies; or
- e. Any other medium that can display a violation; and

(2) Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

Red zone infraction means a traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

Traffic control signal means a device exhibiting different colored lights or colored lighted arrows, successively, one at a time, or in combination, using only the colors green, yellow, and red, which indicate and apply to drivers of motor vehicles as provided in F.S. § 316.075.

Traffic control signal monitoring system/device means an electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still cameras and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

(Ord. No. 07-585, § 70-83, 1-8-2008)

Sec. 38-84. Adherence to red light traffic control signals.

Motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is stopped at a clearly marked stop line, or if none, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersection roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

(Ord. No. 07-585, § 70-84, 1-8-2008)

Sec. 38-85. Violation.

A violation of this article, known as a red zone infraction, shall occur when a vehicle does not comply with the requirements of section 38-84. Violations shall be enforced pursuant to section 38-87.

(Ord. No. 07-585, § 70-85, 1-8-2008)

Sec. 38-86. One-month notice; introductory period.

For the first month of the ordinance from which this article is derived, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with normal traffic enforcement techniques, the vehicle owner shall receive a courtesy notice of the violation. Commencing one month after the effective date of the ordinance from which this article is derived, the vehicle owner is subject to the enforcement provision as provided herein.

(Ord. No. 07-585, § 70-86, 1-8-2008)

Sec. 38-87. Review of recorded images.

(a) The owner of the vehicle observed by recorded images committing a red zone infraction shall be issued a notice of violation. The recorded image shall be sufficient grounds to issue a city notice of violation.

(b) The city shall designate a traffic control infraction review officer, who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The traffic control infraction review officer shall review recorded images prior to the issuance of a notice of violation/infraction to ensure accuracy and the integrity of the recorded images. The traffic control infraction officer shall also verify that the traffic control monitoring system/devices that captured the recorded images was functioning properly at the time the recorded images were captured. Once the traffic control infraction review officer has verified the accuracy of the recorded images and functionality of the traffic control monitoring system/devices, he shall complete a report, and a notice of violation/infraction shall be sent to the vehicle owner at the address on record with the state department of highway safety and motor vehicles.

(Ord. No. 07-585, § 70-87, 1-8-2008)

Sec. 38-88. Notice of violation/infraction.

The notice of violation shall include:

- (1) The name and address of the vehicle owner;
- (2) The license plate number and registration number of the vehicle;
- (3) The make, model, and year of the vehicle;
- (4) Notice that the violation charged is pursuant to this article;
- (5) The location of the intersection where the violation occurred;
- (6) The date and time of the red zone infraction;
- (7) Notice that the recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction;
- (8) The civil penalty imposed;
- (9) Images depicting violation;
- (10) The procedures for payment of the civil penalty and contesting the notice of infraction;
- (11) A signed statement by the traffic control infraction officer that, based on inspection of recorded images, the vehicle was involved in a red zone infraction;
- (12) Information advising the person alleged to be liable under this section, the manner and time in which liability as alleged in the notice of infraction may be appealed and warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability.

(Ord. No. 07-585, § 70-88, 1-8-2008)

Sec. 38-89. Vehicle owner responsibilities.

A vehicle owner receiving a notice of violation may, within 21 days of the date of the notice of infraction:

- (1) Pay the assessed civil penalty pursuant to instructions on the notice of infraction; or
- (2) Request an appeal pursuant with procedures as outlined in this article.

The failure to comply with the provisions of this section within 21 days from the date of the notice of infraction shall constitute a waiver of the right to contest the notice of infraction and will be considered an admission of liability.

(Ord. No. 07-585, § 70-89, 1-8-2008)

Sec. 38-90. Appeal to hearing officer.

The city's special magistrate is authorized to consider appeals under this article within 21 days of the date of the notice of infraction, the vehicle owner may file an appeal with the city pursuant to the directions in the notice of infraction. A hearing on the appeal shall be scheduled for all appeals.

(1) Upon receipt of the appeal, the city shall schedule a hearing before the hearing officer to occur not later than 90 days after the city's receipt of the appeal request. Notice of hearing shall be provided to the vehicle owner no less than ten days prior to the hearing, and shall be delivered via certified U.S. mail to the same address to which the notice of violation was sent.

(2) The following shall be permissible grounds for an appeal:

- a. At the time of the infraction, the vehicle was not under the care, custody, or control of the vehicle owner or an individual with the vehicle owner's consent, established pursuant to affidavit as provided in 38-91;
- b. The motor vehicle driver was issued a citation by a law enforcement officer, which was separate and distinct from the citation issued under this section, for violating the steady red traffic control signal;
- c. The motor vehicle driver was required to violate the steady red traffic control signal in order to comply with other governing laws;
- d. The motor vehicle driver was required to violate the steady red traffic control signal in order to reasonably protect the property or person of another;
- e. The steady red traffic control signal was inoperable or malfunctioning; or
- f. Any other reason the hearing officer deems appropriate.

(3) The traffic control infraction review officer shall testify at the appeal. The vehicle owner, or his representative, may also present testimony and evidence.

(4) Recorded images indicating a red zone infraction, verified by the traffic control infraction review officer, are admissible in any proceeding before the city's hearing officer to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.

(5) Unless an affidavit is provided pursuant to section 38-91, it is presumed the person registered as the vehicle owner with the state department of motor vehicles or any other state vehicle registration office, or an individual having the owner's consent was operating the vehicle at the time of a red zone infraction.

(Ord. No. 07-585, § 70-90, 1-8-2008)

Sec. 38-91. Vehicle owner affidavit of nonresponsibility.

In order for the vehicle owner to establish that the motor vehicle was at the time of the red zone infraction, in the care, custody, or control of another person without the consent of the registered owner, the vehicle owner is required to complete an affidavit setting forth the circumstances demonstrating that the motor vehicle was not in the vehicle owner's care, custody or control, or that of a person with the vehicle owner's consent. The affidavit must be executed in the presence of a notary, and include:

- (1) If known to the vehicle owner, the name, address, and the driver license number of the person who leased, rented or otherwise had care, custody, or control of the motor vehicle at the time of the alleged red zone infraction.
- (2) If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction.
- (3) The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

The vehicle owner may present an affidavit pursuant to this section, as a defense in any proceeding before the hearing officer.

(Ord. No. 07-585, § 70-91, 1-8-2008)

Sec. 38-92. Penalties.

A violation of this article shall be deemed a noncriminal, nonmoving violation for which a civil penalty in the amount of \$125.00 shall be assessed. As the violation relates to this article and not the state statutes, no points as provided in F.S. § 322.27, shall be recorded on the driving record of the vehicle owner or responsible party. The city may change the aforesaid civil penalty by passing an appropriate resolution of its city council.

(Ord. No. 07-585, § 70-92, 1-8-2008)

Sec. 38-93. Administrative charges.

In addition to the assessment pursuant to section 38-92, administrative charges in the amount of the city's actual costs shall be assessed in the event of an unsuccessful appeal or the necessity to institute collection procedures.

(Ord. No. 07-585, § 70-93, 1-8-2008)

Sec. 38-94. Collection of fines.

The city may establish procedures for the collection of a penalty imposed herein, and may enforce such penalty by civil action in the nature of debt.

(Ord. No. 07-585, § 70-94, 1-8-2008)

Sec. 38-95. Exceptions.

This article shall not apply to red zone infractions involving vehicle collisions or to any

authorized emergency vehicle responding to a bona fide emergency; nor shall a notice of infraction be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indication.

(Ord. No. 07-585, § 70-95, 1-8-2008)