

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

**STEPHANIE WARE and
PHIL ABSHIRE**

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CIVIL ACTION

VERSUS

CASE No.: 08-0218

**THE LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT, THE
LAFAYETTE CITY-PARISH COUNCIL,
JOEY DUREL, AS CITY-PARISH
PRESIDENT OF LAFAYETTE, and
REDFLEX TRAFFIC SYSTEMS, INC.**

JUDGE MELANCON

MAGISTRATE HILL

FIRST SUPPLEMENTAL AND AMENDING COMPLAINT – CLASS ACTION

The First Supplemental and Amending Class Action Complaint of the plaintiffs, Stephanie Ware and Phil Abshire, persons of the full age of majority and residents of Louisiana, and of the Putative Class Plaintiff listed below, is brought pursuant to the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, 42 U.S.C.A. §1983 and 28 U.S.C.A. §1332(d), and the Constitution of the State of Louisiana of 1974, as follows:

1.

Putative Class Plaintiffs herein include:

Stephanie Ware, Phil Abshire, Roger Arabie, Marshall Broussard, John Todd Deville, Billy Guilbeaux, Daniel Holman, Ronnie Hotz, Vance Jolivet, Krindinti Kshipraprasad, Anne McGraw, Daniel L. Milbert, Jimmy Mizzi, Monica Mosenki, Joseph Riley, Esq., John Romagosa and John Roy

2.

Made defendants herein are:

1. **The Lafayette City-Parish Consolidated Government**, a political sub-division of the State of Louisiana; and
2. **Redflex Traffic Systems, Inc.**, a foreign company incorporated in Delaware, with its principal place of business in Scottsdale, Arizona.

3.

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

4.

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

COUNT 1: FEDERAL CLAIMS

5.

Defendants, acting under color of law, have violated the rights of the Putative Class Plaintiffs that are protected by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, 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 (“LCG”) 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 LCG Code of Ordinances, known as the Safelight program (“Safelight”), as follows:

6.

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 LCG that would result from the operation of the red light and speed cameras.

7.

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 LCG 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 . . .

8.

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.

9.

Upon information and belief, more than 18,000 such Notices of Violation have been mailed to individuals to date, pursuant to the Safespeed and Safelight ordinances, and the actual number of those persons who have either sent in payments to satisfy the “civil” tickets, or fought against said tickets in court and lost, or received citations and have yet to respond, is within the defendants’ knowledge.

10.

The Putative Class Plaintiffs, as registered owners of automobiles, each received a Notice of Violation, directly or indirectly, by mail from the defendants 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 City-Parish and, hence,

provided for the “civil” liability assessed against the named plaintiffs as registered owners of the vehicles in question.

At the time of this filing, the following list of Putative Class Plaintiffs paid their fines under the Safespeed or Safelight ordinances by sending money to the defendants:

Vance Jolivette, Jimmy Mizzi, and Joseph Riley, Esq.

At the time of this filing, the following list of Putative Class Plaintiffs requested and/or attended hearings to contest their fines under the Safespeed or Safelight ordinances:

Krindinti Kshipraprasad

At the time of this filing, the following list of Putative Class Plaintiffs received citations under the Safespeed or Safelight ordinances but have yet to respond:

Stephanie Ware, Phil Abshire, Roger Arabie, Marshall Broussard, John Todd Deville, Billy Guilbeaux, Daniel Holman, Ronnie Hotz, Anne McGraw, Daniel L. Milbert, Monica Mosenki, John Romagosa and John Roy

11.

The Putative Class Plaintiffs intend to represent the class of all automobile owners ticketed by the defendants for violating the Safespeed or Safelight ordinances since their inception who have either 1) paid the fines directly, 2) contested the fines, lost and paid, or 3) not yet paid or contested the fines. 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 or 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 Putative Class Plaintiffs would be the same as the claims typically available to the class. Further, as required by Rule 23(a), the Putative Class Plaintiffs would fairly and adequately protect the interests of the class.

12.

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.

13.

The Putative Class 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 Putative Class Plaintiffs simply received Safespeed 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. Some plaintiffs paid the fines, others contested and others still have time to choose either option, but every member of the class faced or face this same potential for liability, including the imminent threat of debt collection for failure to pay timely.

14.

The Safelight ordinance violates the plaintiffs' right against self-incrimination protected by the Fifth Amendment because the ordinance immediately assumes a plaintiff guilty, or liable, of running a red light simply because the plaintiff is the registered owner of the vehicle photographed. The Safelight ordinance then impermissibly places 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 ordinance provides 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 the Safelight ordinance, 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 Safelight ordinance therefore is an impermissible attempt by the defendants to shift the burden of proof onto the plaintiffs, using a “civil” scheme, in a manner calculated to destroy plaintiffs’ Fifth Amendment rights otherwise available during both civil and criminal prosecution. This violation 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 ATSE ordinance violates the plaintiffs’ right against double jeopardy protected by the Fifth Amendment because the very real possibility exists that if a plaintiff chooses to pay the Safespeed or Safelight fine as demanded in the Notice of Violation, the very real possibility exists that such payment of the “civil” violation could be used as evidence of an admission of a violation of LSA-R.S. §32:61 or LSA-R.S. §32:232, further violating the plaintiff’s Fifth Amendment rights. The enforcement of the Safespeed and Safelight ordinances therefore is an impermissible violation of plaintiffs’ Fifth Amendment rights. This violation 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.

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 ordinance is disguised as "civil" in nature. The Safespeed and Safelight ordinances therefore are an impermissible attempt by the defendants to suppress the plaintiffs' Sixth Amendment rights otherwise available during criminal prosecution. This violation of plaintiffs' civil rights is enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

17.

The Safespeed and Safelight ordinances violate the Putative Class Plaintiffs' constitutional rights to procedural due process protected by the Fourteenth Amendment because the ordinances immediately assumes a plaintiff guilty, or liable, of running a red light simply because the plaintiff was the registered owner of the photographed vehicle. The ordinances then impermissibly shift the burden of proving innocence onto 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 thirty days, he or she would face more fines and possible credit ruin. 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 ordinances are an impermissible attempt by the defendants to transform existing criminal laws, LSA-R.S. §32:61 and LSA-R.S. §32:232(3) into "civil" violations, in a manner calculated to destroy plaintiffs' procedural due process rights otherwise available during criminal prosecution of those traffic laws. These

violations of plaintiffs' civil rights are enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

18.

Every Putative Class Plaintiff who paid his or her fine directly under the Safespeed and Safelight ordinances, and every Putative Class Plaintiff who contested their ticket and lost and paid their fine plus costs, suffered direct property deprivation caused by the defendants' enactment and enforcement of the Safespeed and Safelight ordinances that violated plaintiffs' rights under the Fifth Amendment and Sixth Amendment, and plaintiffs' due process rights under the Fourteenth Amendment, and a favorable decision herein for the Putative Class Plaintiffs would redress this wrong.

Likewise, every Putative Class Plaintiff who has requested a hearing or has one scheduled, or has yet to choose between payment or contest, faces the very imminent threat of property deprivation caused by the defendants' enactment and enforcement of the Safespeed and Safelight ordinances in violation of their Fifth, Sixth and Fourteenth Amendment rights, and a favorable decision herein for the Putative Class Plaintiffs would redress this wrong.

COUNT II: STATE CLAIMS

The Putative Class Plaintiffs re-assert, re-allege and adopt all previous allegations of fact and conclusions of law set forth in Paragraphs 1 through 18, above, as if copied herein *in extenso*.

19.

Defendants, acting under color of law, have violated the rights of the Putative Class Plaintiffs that are protected by the Constitution of the State of Louisiana of 1974, as well as their

due process rights and civil rights, by enacting and enforcing the Safespeed and Safelight ordinances as set forth below. Likewise, the Safespeed and Safelight ordinances violate several Louisiana statutes and the Louisiana Highway Regulatory Act, as follows:

20.

The Safespeed and Safelight ordinances are invalid, as they lack enabling legislation from the Louisiana State Legislature. In 2001, 2003 and 2005, enabling legislation was introduced by law makers in Baton Rouge to either amend LSA-R.S. §32:1 *et seq.*, to allow for criminal traffic camera enforcement, to create “civil” traffic camera enforcement and/or to allow certain parishes to adopt traffic camera enforcement.¹ In each instance, the legislation was either roundly defeated by vote or withdrawn. As it stands, the Louisiana State Legislature has **never** passed enabling legislation allowing individual parishes or municipalities to adopt ordinances enforcing traffic laws using camera systems, therefore the Safespeed and Safelight ordinances are invalid on their face.

21.

By enacting and enforcing the Safespeed and Safelight ordinances, defendants have violated the rights of all of the Putative Class Plaintiffs who have paid the “civil” Safespeed and Safelight fines or hearing costs, because Article I, §4(D) of the Constitution of the State of Louisiana of 1974 limits the taking of personal property to be forfeited at a “civil” proceeding to personal property directly involved in the sale, use, exchange, manufacture, etc., of contraband drugs. These violations of the Putative Class Plaintiffs’ civil rights were enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

The Safespeed and Safelight ordinances violate the rights of the Putative Class Plaintiffs protected by Article VI, §9(A) of the Constitution of the State of Louisiana of 1974, because the ordinances impermissibly alienate the police power of the Lafayette Consolidated Government via contract with a private entity, Redflex. Upon information and belief, the contract between the LCG and Redflex provides that the collection of fines for traffic 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]

¹ See <http://www.legis.state.la.us>- Regular Session, 2001, Senate Bill No. 1059: Result- Rules suspended; Regular Session, 2004, House Bill No. 1078: Result- yeas 24, nays 71; Regular Session, 2005, Senate Bill No. 168: Result- Withdrawn.

Under the provisions of its Safespeed and Safelight contract with the LCG, 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 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 is based on the amount of money paid by citizens who received citations), to control the access of information to the court, and the presentation of that information to the court. A blatant conflict of interest exists between the LCG and the profit motives of the private company Redflex.

Further proof of Redflex's improper fine collection is found in envelopes received by the Putative Class Plaintiffs, from "TRAFFIC ENFORCEMENT OFFICE," stating "OFFICIAL GOVERNMENT BUSINESS – RESPONSE REQUIRED," with an address in Scottsdale, AZ, which happens to be the principal business address of Redflex, as listed on the Louisiana Secretary of State's Corporations database webpage. Moreover, the Notice of Violation received by plaintiffs provides that fines can be paid online by credit card at www.photonotice.com, a website that Redflex, not the LCG, 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 class members to the defendants, including Redflex, must be returned.

23.

Defendants' enactment and enforcement of the Safespeed and Safelight ordinances violates the rights of the Putative Class Plaintiffs protected by Article VI, §9(B) of the Constitution of the State of Louisiana of 1974, because the "civil" ordinances impermissibly attempts to govern civil relationships.

24.

The Safespeed and Safelight ordinances violate Louisiana law because their provisions conflict with the uniform provisions of the Louisiana Highway Regulatory Act, LSA-R.S. §32:1 *et seq.*, including but not limited to §32:61, §32:393, §32:398, §32:398.1, §32:398.10, and §32:414(E)(1). Defendants' enactment 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 enforced by the defendants while acting under color of law, in violation of 42 U.S.C.A. §1983.

25.

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.

26.

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 calibrated and/or re-calibrated the timing of traffic lights at "system locations" throughout the Lafayette City-Parish so as to shorten the duration of the yellow caution lights from their previous settings, and/or as 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.

27.

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

28.

Every Putative Class Plaintiff who paid his or her fine directly under the Safespeed and Safelight ordinances, and every Putative Class Plaintiff who contested their ticket and lost and paid their fine plus costs, suffered direct property deprivation caused by the defendants' enactment and enforcement of the Safespeed and Safelight ordinances that violated plaintiffs' rights under the Constitution of the State of Louisiana of 1974, and plaintiffs' due process rights protected by Louisiana law, and a favorable decision herein for the Putative Class Plaintiffs would redress this wrong.

Likewise, every Putative Class Plaintiff who has requested a hearing or has one scheduled, or has yet to choose between payment or contest, faces the very imminent threat of property deprivation caused by the defendants' enactment and enforcement of the Safespeed and Safelight ordinances in violation of plaintiffs' rights under the Constitution of the State of Louisiana of 1974, and plaintiffs' due process rights protected by Louisiana law, and a favorable decision herein for the Putative Class Plaintiffs would redress this wrong.

29.

The aforementioned actions of the defendants, in concert, have caused the Putative Class Plaintiffs actual property deprivation as certain plaintiffs listed above 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 are invalid, and their enactment and enforcement by defendants violates plaintiffs' constitutional rights and procedural due process rights as set forth above, and defendants, acting in concert, have violated these constitutional and civil rights while acting under the color of law. Defendants have also violated several Louisiana laws by enacting and enforcing the Safespeed and Safelight ordinances. Therefore, plaintiffs are seeking all actual monetary damages they incurred and paid as a result of receiving a Notice of Violation under the Safespeed and Safelight ordinances, whether said money is in the possession of the LCG, Redflex or any other entity or agent under these defendants' control, all damages allowed under 42 U.S.C.A. §1983, including punitive damages, 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, Stephanie Ware, Phil Abshire and the Putative Class Plaintiffs pray that the defendants be duly cited to appear and answer this First Supplemental and Amending Complaint – Class Action, 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 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,

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent to all counsel of record via ECF, telefax and/or U.S. Mail, this 4 April 2008.

/s/ Anthony S. Maska

/s/ Anthony S. Maska
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