

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

**DANIEL CONEJO, AMME HOGAN,
SONNY LEEPER, DAVID QUINTANA,
JAMES REICH, JOHN RUSSO,
KEVIN SMITH, MARK WEINSTEIN,
and a Class of Others Similarly Situated,**

Plaintiffs,

vs.

**CITY OF ALBUQUERQUE,
MARTIN P. CHÁVEZ, Mayor,
REDFLEX TRAFFIC SYSTEMS, INC.,**

Defendants.

**CLASS ACTION COMPLAINT FOR DECLARATORY,
COMPENSATORY, AND INJUNCTIVE RELIEF**

Plaintiffs, individually and on behalf of a class of similarly situated victims of the Albuquerque STOP Ordinance present the following Complaint, stating as grounds therefore:

1. In 2005 the City enacted the "Safe Traffic Operations Program" (hereinafter, "STOP") Ordinance, No. O-05-96, authorizing surveillance cameras to photograph vehicles throughout the City of Albuquerque and permitting the City Police Department and a private contractor to assess civil fines and penalties for the purported "abatement" of red light running, speeding, and other traffic offenses by vehicles defined as "nuisances."

JANET L. ASHLEY

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Janita M. Duran
CLERK DISTRICT COURT

CV 2007 10434

2. Plaintiffs are the registered owners of vehicles that allegedly violated the STOP Ordinance.

3. The City of Albuquerque is a home-rule municipality, located in Bernalillo County, New Mexico; Martin Chávez is the Mayor of Albuquerque.

4. Redflex Traffic Systems, Inc. (“Redflex”) is the contractor that provides cameras, equipment, and clerical, technical, and other support and collection services to the City of Albuquerque.

5. Redflex is a for-profit corporation which charges monthly fees and takes a substantial percentage of the money collected for alleged violations of the STOP Ordinance.

6. At all times relevant to this Complaint, Redflex has acted with the City of Albuquerque and its Police Department under color of law.

7. This case is brought pursuant to the laws and constitutions of the United States and the State of New Mexico, the New Mexico Unfair Practices Act, the New Mexico Declaratory Judgment Act, and the Ordinances of the City of Albuquerque.

8. At the behest of Mayor Chávez, the Albuquerque City Council has “found” that:

Red light violations are a nuisance . . . drivers who fail or refuse to pay the fines and repeatedly run red lights create a severe nuisance that will not be abated unless the City . . . removes the instrumentality used to create this nuisance . . . a vehicle used to violate this Ordinance is the instrumentality of a nuisance that must be abated in the City, . . . this Ordinance is a nuisance abatement ordinance enacted pursuant to the City’s inherent authority under state law and that the remedies are purely civil and not criminal in nature.

9. Vehicles photographed and reported by the Redflex cameras are deemed “guilty” of traffic offenses and their owners are thereby deemed to have violated the STOP Ordinance.

10. The STOP Ordinance states that “Any violation of the New Mexico State Motor Vehicle Code or the Albuquerque Traffic Code is a violation of this article.” However, no actual Traffic Code violation can possibly be proven by the City because State and City Traffic Codes relate to *drivers* rather than *owners* of vehicles. Similarly, no proof or evidence supports Defendants’ “nuisance” claims.

11. The Notices of Violation received by Plaintiffs assume that their vehicles have violated traffic laws and state, for example, that:

Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP Fine will lead to increasing fines and penalties including loss of the subject vehicle. After you have received this STOP Fine, it is a criminal violation to sell, transfer or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP Fines are paid.

12. According to Notices of Default received by some of the Plaintiffs:

Please be aware that your failure to respond within 20 days to the Notice from the City of Albuquerque’s Safe Traffic Operations Program “STOP” constitutes a waiver of your right to contest the violation of Ordinance Sec. 7-11-1 et Seq.; R.O.A. 1994 as amended.

Unfortunately, your failure to pay the \$100.00 Fine by the “Respond by Date” indicated on the front of the STOP Fine Notice has resulted in an additional penalty of \$200.00. Failure to pay the \$300.00 now due within 20 days will subject your vehicle to seizure.

Immediate payment of \$300.00 is necessary to prevent seizure of your vehicle. See the coupon below for payment methods. There is no grace period to submit payment for this violation.

13. Defendants' misconduct is willful, fraudulent, and avaricious.

COUNT I

LACK OF JURISDICTION

14. Each and every preceding allegation is incorporated herein.

15. The Metropolitan Court has jurisdiction over "offenses and complaints pursuant to ordinances of the county and of a municipality located within the county." Section 34-8A-3, NMSA. Specifically, pursuant to Sec. 34-8A-5, NMSA, there is a right to a trial in the Metropolitan Court for traffic offenses.

16. Defendants lack authority or power to enforce, adjudicate and collect fines for violations of the State and City Traffic Codes. Such actions are reserved for the Metropolitan Court and are outside of the administrative jurisdiction of the Defendants.

17. While a municipality may define a "nuisance," it must do so in conformance with State law. A "public nuisance" is broadly described in Sec. 30-8-1, NMSA, as a criminal offense and commission or maintenance of a public nuisance is a petty misdemeanor.

18. A real public nuisance may be "abated" pursuant to the procedures set out in Sec. 30-8-8, NMSA, which provides jurisdiction in the district courts. Defendants, however, have created their own pretextual, revenue-producing "abatement" process

which is irrational, inconsistent with State law, unfair, and apparently ineffective in reducing accidents.

19. The presumption in the STOP Ordinance that an alleged traffic offense invariably creates a “nuisance” is unreasonable, irrational, inconsistent with law, and outside the administrative jurisdiction of the Defendants.

COUNT II

VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT

20. Each and every preceding allegation is incorporated herein.

21. Defendants have promulgated, advertised, advanced, and enforced the STOP Ordinance under false pretenses and threats that (a) it is a safety program rather than a money-making program; (b) it will decrease accident rates at intersections; (c) they will seize a vehicle whose owner does not pay a fine or otherwise comply with the STOP Ordinance; and (d) offending vehicles and/or their owners are “nuisances” which must be “abated.”

22. Defendants’ threats to impose fines and penalties and seize vehicles without due process of law constitute false and unconscionable misrepresentations designed and intended to compel and extort payment of money under false pretenses.

23. Defendants have improperly and unlawfully collected fines and penalties that were not properly owed or warranted and have failed to dismiss cases or return fines and penalties in cases that were improperly documented, processed, or prosecuted.

24. The fines and penalties imposed under the STOP Ordinance are substantially higher than the fines that would have been applied for the same or similar traffic offenses even if proven in a court of law.

25. Under the terms of the New Mexico Unfair Practices Act, Plaintiffs are entitled to triple damages, costs, and reasonable attorneys' fees.

COUNT III

VIOLATIONS OF THE STATE AND CITY TRAFFIC CODES

26. Each and every preceding allegation is incorporated herein.

27. The New Mexico Motor Vehicle Code provides that "to do any act forbidden or fail to perform any act required in Article 7 of Chapter 66, NMSA 1978" is a misdemeanor. The City's Code of Ordinances, Sec. 8-1-1-1, NMSA, provides that "it is a petty misdemeanor for any person to do any act forbidden or fail to perform an act required in this Traffic Code." Running red lights, speeding, and making right turns at red lights without coming to a complete stop are such violations.

28. The State Motor Vehicle Code states that "no local authority shall enact or enforce any ordinance, rule or regulation in conflict with" the Motor Vehicle Code "unless expressly authorized" therein. Section 66-7-8, NMSA. The Code provides that enforcement of motor vehicle violations shall be "by a commissioned, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating his official status," Sec. 66-8-124, NMSA, and requires that a police officer giving a ticket or citation must do so from a marked police or patrol vehicle.

29. The City's Code of Ordinances, Sec. 8-1-3-7, NMSA, states that "all citations issued under this Traffic Code shall be issued by a uniformed on-duty police officer" and that "no form of complaint other than a citation shall be used."

30. Both the State and City Traffic Code provide that police officers will bring and enforce traffic violations in the Metropolitan Court.

COUNT IV

BIASED ADMINISTRATIVE PROCESS

31. Each and every preceding allegation is incorporated herein.

32. The STOP Ordinance provides that the recipient of a STOP fine "may request a hearing." The Ordinance defines "Hearing Officer" as "An administrative hearing officer with authority from the Mayor to enforce and adjudicate matters under this article."

33. Defendants select and pay the STOP Ordinance Hearing Officers. No rules or regulations govern the selection or retention of STOP Ordinance Hearing Officers, who are employed and retained without competitive bidding or oversight and have a financial interest in continuing to work under exclusive contracts.

34. Defendants have relieved themselves of the burden of proving either the alleged traffic offense or the alleged "nuisance" violations, with the result that they receive revenues and profits they are neither entitled to nor deserve.

35. Because the STOP Ordinance Hearing Officer by definition are both “enforcement” and “adjudication” Officers, they have inherent conflicts of interests and roles, are not fair or neutral, and are biased in favor of enforcement.

COUNT V

VIOLATIONS OF CONSTITUTIONAL RIGHTS

36. Each and every preceding allegation is incorporated herein.

37. The STOP Ordinance violates Article II, Sections 10, 13, 14, and 18, and Article X, Section 6, of the New Mexico Constitution and the Fourth, Sixth, Seventh, Eighth, and Fourteenth Amendment to the United States Constitution.

38. By their application and enforcement of the STOP Ordinance Defendants violate the United States and New Mexico Constitutions, entitling Plaintiffs to relief for such violations under 42 U.S.C. Section 1983.

COUNT VI

CLASS ACTION

39. Each and every preceding allegation is incorporated herein.

40. Plaintiffs bring this action pursuant to Rule 1-023 of New Mexico Rules of Civil Procedure on behalf of all other persons similarly situated.

41. The class that Plaintiffs seek to represent in this action consists of all persons who have been issued notices of violation(s) of the City’s STOP Ordinance.

42. The class is so numerous that joinder of all members of the class is impractical and there are questions of law and fact common to the class.

43. Defendants have acted or refused to act and will continue to act or refuse to act on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate with respect to the class as a whole.

44. Separate actions by individual members of the class on common issues would create a risk of inconsistent adjudication with respect to individual members of the class and would risk establishing incompatible standards of conduct for Defendants.

45. Questions of law and fact common to the members of the class predominate over any questions affecting only an individual member or members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy in this case.

46. The claims of the named-Plaintiffs are typical of the claims of the class and Plaintiffs and their attorney will adequately represent and protect the interests of the class.

COUNT VII

DECLARATORY JUDGMENT

47. Each and every preceding allegation is incorporated herein.

48. The promulgation, application, and enforcement of the STOP Ordinance raises issues and concerns which require determination and clarification by the Court.

49. Included in the issues that are ripe for a declaratory judgment are the issues of jurisdiction, rights, and common law, statutory, and constitutional violations. These are disputed matters of law that are of substantial concern to Plaintiffs and the public.

50. The New Mexico Declaratory Judgment Act, Sec. 44-6-1 to 44-6-15, NMSA, permits the court “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.” Sec. 44-6-14, NMSA.

51. The application and enforcement of the Albuquerque STOP Ordinance is a matter of substantial public concern and importance; the controversy involves the rights and legal relations of the parties seeking declaratory relief; the interests of the parties are real and adverse, and the issues are ripe for judicial determination.

COUNT VIII

INJUNCTIVE RELIEF

52. Each and every preceding allegation is incorporated herein.

53. Defendants have promulgated, enacted, and enforced the City’s STOP Ordinance without regard for the jurisdictional, constitutional, and statutory considerations set out herein which preclude the Ordinance and its application and enforcement.

54. Defendants have a mandatory, non-discretionary duty to enforce traffic offenses through the established traffic laws and regulations which require hearings in the Metropolitan Court and to comply with Federal, State and City constitutional and statutory law.

55. Plaintiffs are beneficially interested and have interests in common with the public. Without issuance of an injunctive order and/or an extraordinary writ, Defendants will continue to refuse or delay compliance with the law and will continue to deny and compromise Plaintiffs' rights and interests.

56. Plaintiffs have a likelihood of success on the merits, they are suffering irreparable injury because of the Defendants' failures to comply with the law, and they have no other plain, speedy, or effective remedy outside of this lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray they be awarded declaratory, injunctive, and compensatory relief:

A) Declaring the rights and obligations of the parties and deeming the STOP Ordinance illegal and unconstitutional;

B) Enjoining present and future operations and enforcement of the STOP Ordinance;

C) Voiding any and all pending or outstanding notices of violations or defaults and any outstanding STOP Ordinance fines or claims of violation;

D) Requiring the Defendants to reimburse the fine(s) and penalties collected by the City for alleged violations of the STOP Ordinance;

E) Awarding damages, costs, and attorneys' fees and awarding punitive damages as allowed by law; and,

F) Awarding such other and further relief as the court deems just, fair, and equitable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Livingston", written over a horizontal line.

Paul Livingston
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