

HONORABLE JOHN C. COUGHENOUR
Hearing Date: November 20, 2009
Oral Argument Requested

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL TODD, et al.,

Plaintiffs,

v.

CITY OF ABERDEEN, et al.

Defendants.

No. 09-cv-01232 JCC

PLAINTIFFS' INDEX TO RESPONSE
AND OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS AND FOR
JUDGMENT ON THE PLEADINGS

There are five motions pending before the Court:

- (1) Defendant Redflex's motion to dismiss (dkt# 48);
- (2) Defendant ATS' motion to dismiss (dkt# 45);
- (3) the Defendant cities joint motion for judgment on the pleadings (dkt# 56);
- (4) the Defendant City of Bremerton's motion to dismiss (dkt# 55); and
- (5) the Defendant City of Renton's motion for judgment (dkt#64).

The motions rely on and incorporate similar arguments made in the different motions.

Plaintiffs have responded in opposition to the motions in similar manner by relying on and incorporating arguments made in their separate responses filed in opposition to the motions as though all arguments and evidence were presented in each response rather than presenting the same evidence and reiterating the same arguments. Plaintiffs incorporate by this

PLFS' INDEX TO RESPONSE AND
OPP. TO MOTIONS TO DISMISS - 1
[Cause No. 09-cv-01232 JCC]

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1 reference each fact and argument set forth in each Response to each motion in all Responses
2 to all motions as if fully set forth in each Response.

3 To assist the Court, Plaintiffs respectfully submit the following index to their
4 Responses to the Defendants' Motions.¹

5 **A. Res Judicata**

6 1. Plaintiffs' Response to Defendants' *Res Judicata* arguments is found in
7 Plaintiffs' Response to Redflex's Motion at III (A), at 8 – 19.²

8 **B. Declaratory and Injunctive Relief**

9 2. Plaintiffs' Response to Defendants' arguments concerning Plaintiffs'
10 Declaratory Judgment Act and Injunctive Relief claims is found in the following Responses:³

11 a. Response to argument that the Redflex and ATS' contracts are not unlawful is
12 found in Plaintiffs' Response in opposition to ATS' Motion at III(C), at 16-19.⁴

13 b. Response to argument that Washington Law did not required approval of
14 notices of infraction is found in Plaintiffs' Response in opposition to the Motion of the City of
15 Renton.⁵

16 c. Response to argument that fines were not excessive is found in Plaintiffs'
17 Response to Joint Motion of Defendant cities.⁶

18 d. Response to argument that use of Safety Cameras did not violate due process is
19 found in Plaintiffs' Response in opposition to the Joint Motion of the Defendant cites, at

20 ¹ The Index was necessitated by the lack of congruity in the motions of Defendants Redflex and ATS and the
21 incorporation by reference by the Defendant cities of the arguments made by Redflex and ATS.

22 ² See, Redflex Mot. at III (A), at 6-11; ATS Mot. at III (A), p. 7-11.

23 ³ See, generally, Redflex Mot. at III (B) at 11-19; ATS Mot. at III (D) at 17-22,

24 ⁴ Redflex Mot., III (B)(1)(a)(1)

25 ⁵ Redflex Mot. III (B)(1)(a)(2); ATS Mot. at III (D)(3).

26 ⁶ Redflex Mot. III (B)(1)(a)(3); ATS Mot. at III (B)(3).

1 III(B), and in Plaintiffs' Response to the Redflex Motion at III(C), at 20-21.⁷

2 e. Response to argument that Plaintiffs' lack standing to sue for injunctive relief
3 is found in Plaintiffs' Response to Redflex Motion at III (C) and (D), at 20-23.⁸

4 **C. Abuse of Process**

5 1. Response to argument on Plaintiffs' abuse of process claim is found in
6 Plaintiffs' Response in opposition to ATS Motion at III (B), at 13-17.⁹

7 **D. Unjust Enrichment**

8 1. Response to argument on Plaintiffs' unjust enrichment claim is found in
9 Plaintiffs' Response in opposition to Redflex Motion at III(D) at 21-22.¹⁰

10 **E. Violation of CPA**

11 1. Response to argument on Plaintiffs' CPA claim is found in Plaintiffs' Response
12 in opposition to ATS Motion at III(A), at 8-13.¹¹

13 DATED this 9th day of November, 2009.

14 Breskin Johnson & Townsend
15 Attorneys for Plaintiffs

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21 ⁷ Redflex Mot. III(B)(1)(a)(4); ATS Mot. at III(D)(4).

22 ⁸ Redflex Mot. III(B)(1)(b); ATS Mot. at III(D)(2).

23 ⁹ Redflex Mot. III(C)(2); ATS Mot. at III(C).

24 ¹⁰ Redflex Mot. III(D); ATS Mot. at III(B).

25 ¹¹ Redflex Mot. III(E); ATS Mot. at III(E).

1 **CERTIFICATE OF SERVICE**

2 I, Leslie A. Listy, hereby certify that on November 9th, 2009, I electronically filed the
3 foregoing document with the Clerk of the Court using the CM/ECF system which will send
4 notification of such filing to all attorneys of record.

5
6 s/Leslie A. Listy
7 Leslie A. Listy, legal assistant
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