

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**
Case No. _____

PETER A. DIAMOND, CESAR COURI,
RAUL M. MILIAN, TARYN S.
PISANESCHI and XIOMARA SANTOS,
individually and on behalf of others similarly-
situated,

Plaintiffs,

v.

AMERICAN TRAFFIC SOLUTIONS, INC.,
AMERICAN TRAFFIC SOLUTIONS, LLC
and AMERICAN TRAFFIC SOLUTIONS
CONSOLIDATED LLC,

Defendants.

CLASS ACTION

COMPLAINT AND JURY DEMAND

Plaintiffs PETER A. DIAMOND, CESAR COURI, RAUL M. MILIAN, TARYN S. PISANESCHI and XIOMARA SANTOS individually and on behalf of others similarly situated, bring this class action against Defendants, AMERICAN TRAFFIC SOLUTIONS, INC., AMERICAN TRAFFIC SOLUTIONS LLC, and AMERICAN TRAFFIC SOLUTIONS CONSOLIDATED LLC (collectively, “ATS”), for unlawfully issuing and collecting fines for red-light traffic violations that were void under Florida law.

NATURE OF THE ACTION

1. ATS publicly proclaims to be “Florida and North America’s leading red-light safety camera provider.” The company sells, installs, maintains, operates and monitors red-light camera systems, including the issuance and enforcement of notices and citations, for local governments throughout the U.S. and Canada. ATS provides these services to at least 63 Florida municipalities or counties, including some of South Florida’s largest communities.

2. The highly comprehensive services offered by ATS extract almost complete control from counties and municipalities in the monitoring and enforcement of red-light violations. ATS's employees – and not local law enforcement officers – control almost the entire process. Only ATS employees have access to all images taken by a red-light camera, and only they review all such images.

3. ATS determines which cases evidence a possible red-light violation meriting review by the applicable law enforcement official. ATS then transmits select images to a Traffic Infraction Enforcement Officer ("TIEO") of the contracting local government. If ATS unilaterally determines that a particular case does not meet the evidentiary standards sufficient to merit a red-light violation, that case is not processed any further, and the corresponding images are not submitted to the local authority.

4. TIEOs are required to be employees of the sheriff's department or police department who have "successfully complete[d] instruction in traffic enforcement procedures and court presentation 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[.]" § 316.640(5)(a), Fla. Stat.

5. TIEOs view the images on ATS' proprietary digital software, Axis Violation Processing System ("Axis VPS"), which displays the images in a pre-packaged format. ATS also provides training and the actual workstation for the TIEOs.

6. If ATS transmits an image of an alleged violation through the Axis VPS system, the TIEO authorizes enforcement by clicking a digital "ACCEPT" button. This button is at the top of the options and is colored green. Just below it is a red "REJECT" button. If the TIEO hits this button, there is a control tab to the left of it requiring the TIEO to perform the extra step of

“Select Reject Reason,” of which there are a limited few. There is no such second step in the process to “ACCEPT” a recommended finding of violation.

7. ATC also controls the form, content, printing and mailing of the red-light infractions. Once the TIEO hits “ACCEPT” and authorizes enforcement, the Axis VPS system generates a Notice of Violation (“NOV”), including the TIEO’s digital signature and I.D. number. ATS then prints and mails the NOV via certified mail to the registered owner of the vehicle in the recorded image or video. The NOV instructs the owner that he or she must pay \$158.00 before the specified due date.

8. If the owner of the vehicle who receives the NOV fails to pay the fine by the due date, or fails to forward the NOV to whoever the actual driver/violator was, ATS automatically issues a Uniform Traffic Citation (“UTC”) with the TIEO’s digital signature and I.D. number, exactly as it was in the NOV, but without the TIEO providing any further input or authorization. The penalty associated with the UTC is \$277.00.

9. Other than initially clicking “Accept” at the NOV stage, the TIEO has no involvement whatsoever in the issuance of the UTC: the TIEO does not determine its contents, nor does the TIEO even have an opportunity to review the UTC bearing his or her signature.

10. “In Florida, only law enforcement officers and traffic enforcement officers have the legal authority to issue citations for traffic infractions, which means only law enforcement officers and traffic enforcement officers are entitled to determine who gets prosecuted for a red-light violation.” *City of Hollywood v. Arem*, No. 4D12-1312, 2014 WL 5149159, *4 (Fla. 4th DCA Oct. 15, 2014) (citing Fla. Stat. §§ 316.0083(3), 316.640 (2011)). “[A] traffic enforcement officer in a municipality must: (1) be an employee of the sheriff’s or police department; (2) successfully complete the program as described in the statute; and (3) be physically located in

the county of the sheriff's or police department.” *Id.* (citing Fla. Stat. § 316.640(5)(a)).

11. Although Florida law authorizes counties and municipalities to delegate **initial review** of potential violations captured by a red-light camera, it **does not authorize** them to delegate issuance of NOVs and UTCs. ATS unlawfully conducts and controls almost the entire issuance and enforcement process.

12. ATS failed to comply with these restrictions of Florida law and assumed police powers reserved to the local governments. ATS's issuance of NOVs and UTCs therefore violated Plaintiffs' right to due process of law under the U.S. Constitution.

13. Plaintiffs bring this class action on behalf of themselves and all other similarly-situated individuals (or their guardians or representatives) and entities who received NOVs and/or UTCs pursuant to Defendant ATS's improper and unlawful conduct and who either paid the statutory fines or still owe said fines.

PARTIES, JURISDICTION, AND VENUE

14. This is a class action for damages that exceed \$5,000,000.00, exclusive of interest and costs.

15. Plaintiff Peter A. Diamond is a citizen of Florida, and resident of Miami-Dade, County, who is over the age of eighteen and otherwise *sui juris*.

16. Plaintiff Cesar Couri is a citizen of Florida, and resident of Miami-Dade, County, who is over the age of eighteen and otherwise *sui juris*.

17. Plaintiff Raul M. Milian is a citizen of Florida, and resident of Miami-Dade County, who is over the age of eighteen, and otherwise *sui juris*.

18. Plaintiff Taryn S. Pisaneschi is a citizen of Florida, and resident of Palm Beach County, who is over the age of eighteen, and otherwise *sui juris*.

19. Plaintiff Xiomara Santos is a citizen of Florida, and resident of Miami-Dade County, who is over the age of eighteen, and otherwise *sui juris*.

20. Defendant American Traffic Solutions, Inc. is a Kansas corporation with its principal place of business located at 7681 East Gray Road, Scottsdale, Arizona. It is one of the two largest traffic camera vendors/operators in the United States and conducts significant business in Florida, including the installation and operations of numerous red-light cameras in Florida. ATS engages in substantial, continuous, systematic, and non-isolated business activity within the state of Florida. It is subject to personal jurisdiction in the State of Florida because it regularly conducts business in the State of Florida and committed the unlawful acts alleged herein in the State of Florida. On its website, ATS openly acknowledges its affiliation with the State of Florida and in fact uses the affiliation as a marketing tool.

21. Defendant American Traffic Solutions LLC is a Delaware limited liability company with its principal place of business located at 7681 East Gray Road, Scottsdale, Arizona.

22. Defendant American Traffic Solutions Consolidated LLC is a Delaware limited liability company with its principal place of business located at 7681 East Gray Road, Scottsdale, Arizona.

23. At all relevant times, ATS has acted as a contractor to and agent for various Florida municipalities and counties by, among other things, performing red-light camera installation and maintenance, as well as other governmental functions, including but not limited to issuing NOVs and UTCs to Plaintiffs and Class Members.

24. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332(d), and 28 U.S.C. § 1343.

25. Venue is proper within this District because a substantial part or all of the events giving rise to the claims occurred and continue to occur in this District, given that ATS has operated and continues to operate red-light cameras in various counties and municipalities in within this District, including Aventura, Bal Harbour, Boca Raton, Coral Gables, Cutler Bay, Doral, Fort Lauderdale, Hialeah Gardens, Hollywood, Homestead, Key Biscayne, Miami, North Miami Beach, North Miami, Palm Beach County and West Palm Beach.

GENERAL ALLEGATIONS

A. Red-light Traffic Camera Systems and ATS's Red-light Traffic Enforcement Program

26. Red-light traffic camera systems integrate cameras and sensors that continuously monitor traffic at certain pre-selected intersections. A red-light camera connects to a sensor that monitors traffic flow at a cross-walk or stop line and is connected to another sensor that detects when the traffic light changes color. At a specified time after the traffic light has turned red, the camera automatically photographs any vehicle traveling at a pre-set minimum speed. A digital video camera or cameras are also used to record the entire alleged infraction.

27. ATS offers privatized, traffic law enforcement solutions designed to detect and enforce red-light traffic infractions. It provides an all-encompassing range of services to local governments for detection and enforcement of traffic infractions, including but not limited to: (1) marketing and training to help gain public support for its products; (2) studies designed to aid local governments to pitch the idea to constituents and lawmakers; (3) traffic studies (performed by ATS) to select appropriate intersections for the installation of its products; (4) the maintenance, repair and installation of its products; (5) training for local government employees, including law enforcement officials; (6) its proprietary software, Axis Violation Processing System, utilized by law enforcement officials to review potential infractions and by courts to

receive evidentiary support for challenged cases; (7) expert witnesses to support the prosecution of drivers accused of traffic infractions (and training for TIEO's to provide evidentiary testimony); (8) a legal database to inform local governments of the relevant laws; the design, printing, mailing and processing of NOVs and UTCs; (9) the collection of fees and penalties from drivers accused of traffic infractions; (10) a nationwide toll-free number and website listed on all NOV's through which an accused violator is informed of payment options and means by which to contest, containing no specific information as to the local laws applicable to where the violation occurred; and (11) legal memoranda to advise local government clients throughout the entire implementation and enforcement process.

28. ATS's program is so comprehensive that a local government need only obtain necessary construction permits, a TIEO capable of reviewing hundreds of images of potential violations per day, and a hearing process to prosecute alleged violators who challenge the issued NOVs or UTCs.

29. The pre-processed violations data that ATS initially reviews to determine whether it constitutes a violation is sent to Florida TIEO's in the form of three photos and a very brief video of the alleged infraction. The first photo shows the vehicle before the stop bar with the red light, the second shows the vehicle beyond the stop bar with the red light and the third is a close-up of the vehicle license plate. There is no photo or video identifying the driver of the vehicle. If processed, the address linked to the license plate will receive the violation, regardless of who was driving the vehicle. Because a substantial number of drivers lease their vehicles, the issuance of the NOV in the foregoing manner can create a substantial delay, resulting in the actual driver receiving the NOV much closer to or even after its due date. NOVs of \$158.00 quickly become UTCs of \$277.00 in this manner.

30. TIEOs have limited access to the Axisis VPS system for purposes of reviewing “pre-processed Violations Data.” Once such data is transmitted, the TIEO has access to the images of the potential violation for only seven days.

31. In exchange for its products and services, ATS charges monthly maintenance and service fees. If ATS is involved in the collection process of overdue fees or penalties, it charges an additional fee of as much as 30% of the fees collected.

B. The Mark Wandall Act Governs ATS’s Business in Florida.

32. In 2010, the Florida Supreme Court held that the local ordinances pursuant to which violations were issued prior to July 1, 2010, were preempted by state law. The Florida legislature responded by passing the Mark Wandall Traffic Safety Act (the “Wandall Act”), which authorized the use of red-light traffic-infraction detectors by local governments and the Florida Department of Highway Safety and Motor Vehicles. The Act went into effect on July 1, 2010. This Complaint addresses only violations issued after July 1, 2010.

33. The Wandall Act grants traffic infraction enforcement officers the power to enforce red-light violations under sections 316.074(1) and 316.075(1)(c)1 of the Florida Statutes. The Wandall Act further authorizes TIEOs to “review . . . information from a traffic infraction detector” before “the traffic infraction enforcement officer” issues a citation for violations. Fla. Stat. § 316.0083(1)(a) (2013).

34. Section 316.074(1) requires drivers to “obey the instructions of any official traffic control device[.]” Section 316.075(1)(c) requires that vehicles “facing a steady red signal . . . stop [and remain stopped] before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection[.]”

35. The Wandall Act provides, however, that “[a] notice of violation and a traffic

citation may not be issued for failure to stop at a red-light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible.” Fla. Stat. § 316.0083(1)(a).

36. When a traffic citation is issued under the Wandall Act, “the *traffic infraction enforcement officer shall provide* by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the date of issuance of the traffic citation to the violator.” Fla. Stat. § 316.650(3)(c) (2013) (emphasis added).

37. The statutory penalty associated with an NOV is \$158.00, and the fine associated with a UTC is \$277.00.

C. ATS’s Red-light Traffic Enforcement Program Violates Florida Law.

38. ATS, through its red-light traffic enforcement program, assumes the duty to monitor and enforce red-light traffic infractions for the municipalities and counties with which it contracts. Upon information and belief, ATS also assumes the duty to inform and update contracting municipalities and counties on the applicable laws and regulations governing red-light cameras.

39. ATS reviews recorded images and video from red-light cameras and determines, in its sole discretion, whether the recorded images should be forwarded to a TIEO for review of ATS’s determination as to whether a violation has occurred. When ATS determines that no violation has occurred, no information regarding the violation is ever transmitted to the TIEO or the contracting local government.

40. Images that ATS determines should be forwarded to a TIEO are sent to the contracting municipality or county via ATS’s Axis VPS software, which permits review of approved images and video. The TIEO may then authorize enforcement of the potential

violation by clicking a digital “Accept” button in Axis VPS. If the TIEO hits “Accept,” Axis automatically populates an electronic NOV form, which includes a computer-generated copy of the TIEO’s signature and badge number, prints out the NOV form, and sends it via certified mail to the registered owner of the vehicle that the camera photographed. Axis also automatically sends a replica of the NOV to the appropriate clerk of courts.

41. Once the registered owner of the vehicle receives the NOV, the owner may either pay the \$158.00 fine or challenge the violation. If the registered owner of the vehicle fails to either pay the fine or challenge the violation before the due date, Axis VPS automatically generates a UTC with the badge number and signature of the original reviewing TIEO, mails the UTC to the registered vehicle owner, and automatically generates a replica, which Axis automatically sends to the appropriate clerk of court.

42. The only involvement by a TIEO during this entire process is his or her review of the photographic images ATS forwarded and clicking “Accept” or “Reject.” After clicking “Accept,” the TIEO never sees the citation bearing his or her digital signature and badge number. The TIEO merely acquiesces in ATS’s decision to issue the NOV. And if the registered owner does not pay the penalty (or elect an option to avoid the penalty) before expiration of the specified due date, ATS – and not the TIEO – issues a UTC without any involvement by the TIEO. ATS’s issuance of a UTC is significant because, unlike an NOV, issuance of a UTC impacts the alleged violator’s permanent driving record unless the UTC is successfully challenged and dismissed, including additional fees and driver’s license suspension.

43. Under Florida law, “*only* law enforcement officers and traffic enforcement officers have the legal authority to issue citations for traffic infractions, which means only law enforcement officers and traffic enforcement officers are entitled to determine who gets

prosecuted for a red-light violation.” *City of Hollywood*, 2014 WL 5149159, *4 (emphasis added).

44. Additionally, “a traffic [infraction] enforcement officer in a municipality must: (1) be an employee of the sheriff's or police department; (2) successfully complete the program as described in the statute; and (3) be physically located in the county of the sheriff's or police department.” *Id.* (citing Fla. Stat. § 316.640(5)(a)).

45. ATS is a private, for-profit vendor, which is not authorized to issue citations. Its employees are not employed by the local sheriff or police department, are not certified under Florida law, and are physically located outside of Florida. The NOVs and UTCs issued by ATS are thus ineffective and unenforceable as a matter of law.

46. If the accused pays the associated penalty, his or her payment is collected and processed by ATS, for which ATS receives an additional fee.

47. If a driver fails to pay the UTC by the due date, the violation goes to collections and the penalty increases substantially. If ATS or its agent serves as the debt collector, it receives an additional fee.

48. The Wandall Act only authorizes state departments, counties and municipalities to assess and collect penalties from NOVs and UTCs, Fla. Stat. §§ 316.0083(1)(b)2–3, and forbids the receipt of a commission from any revenue collected from red-light camera violations, § 316.0083(1)(b)4.

49. ATS thus lacks authority to assess and collect penalties. Any fees charged by ATS in connection with collecting or processing payments have thus been obtained illegally.

50. ATS’s entire business model purports to operate under the specific authority granted by the Florida legislature under the Wandall Act. Yet, more than four years after the Act

became effective, ATS continues to operate in direct violation of certain provisions in the Act and to the detriment of Plaintiffs and others similarly situated.

D. Plaintiff Peter A. Diamond's Experience with ATS

51. On April 21, 2014, Plaintiff Peter A. Diamond was photographed for alleged "failure to comply with a steady red signal" in North Miami. He received an NOV in the amount of \$158.00 as the registered owner of the vehicle photographed, which had a due date of May 21, 2014. On May 29, 2014, he was assessed a late fee of \$16.00 for failing to pay the NOV by the due date, and his license was suspended for the same reason. He was automatically issued a UTC on or about May 29, 2014, which he paid on June 12, 2014 in the total amount of \$293.00. Payment of the UTC cleared his license suspension.

52. Twice more, on September 11 and on September 28, 2014, Plaintiff Peter A. Diamond was photographed for alleged "failure to comply with a steady red signal" at Biscayne Boulevard and N.E. 36th Street and at Biscayne Boulevard and N.E. 71st Street in Miami-Dade County, Florida. The NOVs were issued by ATS on September 25 and October 9, 2014, respectively. As the registered owner of the vehicle photographed, he received both NOVs from ATS in the amount of \$158.00.

53. The NOVs bore the name and badge number of an officer, and included an affirmative representation that "[t]he traffic enforcement officer named above has reviewed the recorded images evidencing the red-light signal infraction, has identified the tag number of the violating vehicle and has found reasonable and probable grounds that a violation has been committed." The UTC contained the same representation.

54. Plaintiff Peter A. Diamond paid the penalties on the NOVs in the amount of \$158.00 each, plus a convenience fee of \$6.72 each, for a combined total of \$329.44. Adding the

\$293.00 amount he paid for his UTC, Plaintiff Peter A. Diamond paid a total of \$622.44 in penalties.

E. Plaintiff Cesar Couri's Experience with ATS

55. On June 27, 2014, Plaintiff Cesar Couri was photographed for alleged "failure to comply with a steady red signal" at eastbound Bird Avenue/Bird Road and South Dixie Highway in Miami-Dade County, Florida. The NOV was issued by ATS on July 11, 2014. As the registered owner of the vehicle photographed, he received the NOV from ATS in the amount of \$158.00.

56. The NOV bore the name and badge number of an officer, and included an affirmative representation that "[t]he traffic enforcement officer named above has reviewed the recorded images evidencing the red-light signal infraction, has identified the tag number of the violating vehicle and has found reasonable and probable grounds that a violation has been committed."

57. Plaintiff Cesar Couri paid the penalty in the amount of \$158.00, plus a convenience fee of \$6.72, for a total of \$164.72, on September 9, 2014.

F. Plaintiff Raul M. Milian's Experience with ATS

58. Plaintiff Raul M. Milian was photographed for alleged "failure to comply with a steady red signal" in Miami-Dade County, Florida. The NOV was issued by ATS. As the registered owner of the vehicle photographed, he received the NOV from ATS in the amount of \$158.00.

59. The NOV bore the name and badge number of an officer, and included an affirmative representation that "[t]he traffic enforcement officer named above has reviewed the recorded images evidencing the red-light signal infraction, has identified the tag number of the

violating vehicle and has found reasonable and probable grounds that a violation has been committed.”

60. Plaintiff Raul M. Milian paid the penalty in the amount of \$158.00.

G. Plaintiff Taryn S. Pisaneschi’s Experience with ATS

61. On August 30, 2013, Plaintiff, Taryn S. Pisaneschi, was photographed for alleged “failure to comply with a steady red signal” at Banyan Boulevard and South Australian Avenue in West Palm Beach, Florida. The NOV was issued by ATS on September 13, 2013. As the registered owner of the vehicle photographed, she received the NOV from ATS in the amount of \$158.00.

62. The NOV bore the name and badge number of an officer, and included an affirmative representation that “[t]he traffic enforcement officer named above has reviewed the recorded images evidencing the red-light signal infraction, has identified the tag number of the violating vehicle and has found reasonable and probable grounds that a violation has been committed.”

63. Plaintiff, Taryn S. Pisaneschi, paid the penalty in the amount of \$158.00.

H. Plaintiff Xiomara Santos’ Experience with ATS

64. On January 21, 2014, Plaintiff, Xiomara Santos, was photographed for alleged “failure to comply with a steady red signal” in the City of Miami, Florida. The NOV was issued by ATS on January 22, 2014. As the registered owner of the vehicle photographed, she received the NOV from ATS in the amount of \$158.00.

65. The NOV bore the name and badge number of an officer, and included an affirmative representation that “[t]he traffic enforcement officer named above has reviewed the recorded images evidencing the red-light signal infraction, has identified the tag number of the

violating vehicle and has found reasonable and probable grounds that a violation has been committed.”

66. Plaintiff, Xiomara Santos, requested a hearing date and pled not guilty. Her hearing date was originally scheduled for March 17, 2014, but it was later continued until April 16, 2014. By that time, she had received an automatically-issued UTC from ATS in the amount of \$277.00. At her hearing on April 16, 2014, the court ordered her to pay the penalty of \$277.00 by May 16, 2014. She was unable to do so due to economic hardship, and on May 24, 2014, the court assessed a late fee of \$16.00 and suspended her license.

67. On June 16, 2014, she paid \$80.00 of the \$293.00 penalty, and the court allowed her to pay the balance pursuant to a payment plan of \$25.00 in each subsequent month due to her economic hardship. To date, she has paid a total of \$180.00, with a balance remaining of \$113.00, excluding additional interest and fees.

I. Plaintiffs and All Class Members Have Been Issued Invalid and Unenforceable Tickets

68. The NOVs sent out by ATS bear an attestation and affirmance, under color of law, that a TIEO has reviewed the recorded images and identified the license plate number of the allegedly violating vehicle and therefore has found reasonable and probable grounds that an offense has been committed, resulting in the violation charged. UTCs bear similar attestations and affirmances, giving them the imprimatur of being from the municipality or county from which it purported to be issued. In fact, both NOVs and UTCs are initially reviewed and ultimately issued by ATS.

69. Plaintiffs received NOVs and UTCs and did not know that the tickets were issued in a manner inconsistent with statutory requirements. Because of the foregoing unlawful conduct, the tickets were not enforceable and Plaintiffs were wrongfully induced to pay fines.

CLASS ACTION ALLEGATIONS

70. Under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Class initially defined as follows:

All individuals and entities who received a NOV and/or UTC based upon an image or video taken from a red light camera operated in Florida by ATS from July 1, 2010, through the present and who either paid the statutory penalty and any additional fees in connection therewith or still owe the penalty.

71. Excluded from the Class are ATS, its employees, officers, directors, legal representatives, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

72. The Class can be readily identified using ticket payment records, issuance records, and other information kept by ATS, public records or third parties in the usual course of business and within their control.

73. As there were in excess of approximately 1.1 million red-light traffic NOVs issued in Florida between 2010 and 2013, the number of Class Members is great enough that joinder is impracticable.

74. Plaintiffs' claims are typical of the claims of the Class, as Plaintiff and Class Members alike were issued unauthorized NOVs and were harmed in the same way by ATS's uniform misconduct.

75. Plaintiffs will fairly and adequately protect the interests of the other members of the Class. Plaintiffs' counsel have substantial experience in prosecuting class actions. Plaintiffs and counsel are committed to vigorously prosecuting this action, have the financial resources to do so, and do not have any interests adverse to the Class.

76. There are numerous questions of law and fact the answers to which are common

to the Class and predominate over questions affecting only individual members, including the following:

- a) whether ATS followed a uniform practice in its implementation of its red-light camera traffic-enforcement program throughout the State of Florida;
- b) whether ATS violated Florida law by designing, printing and/or issuing NOVs and/or UTCs;
- c) whether ATS's practice of issuing NOVs and/or UTCs is "unfair," "deceptive" or "unconscionable" under the Florida Deceptive and Unfair Trade Practices Act;
- d) whether ATS's red-light camera traffic-enforcement program deprived Plaintiffs and Class Members of property without due process;
- e) whether Plaintiffs and Class Members are entitled to an order enjoining ATS from continuing to operate the red-light camera program;
- f) whether Plaintiffs and Class Members are entitled to disgorgement or restitution of the penalties and other fees wrongfully and unlawfully collected or otherwise obtained by ATS in connection with its red-light camera program; and
- g) whether ATS's conduct injured Plaintiffs and Class Members and, if so, the extent of the damages.

77. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Likewise, because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

78. The prosecution of separate actions by the individual Class members would also create a risk of inconsistent or varying adjudications for individual Class members, which could also establish incompatible standards of conduct for ATS. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

COUNT I

Violation of Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. §§ 501.201, *et seq.*)

79. Plaintiffs and the Class incorporate by reference paragraphs 1 through 78 as if fully set forth herein, and further allege:

80. ATS's operation of its red-light camera program, as described above, constitutes an "unfair," "deceptive," and/or "unconscionable" act or practice in violation of Fla. Stat. § 501.204.

81. Specifically, ATS's red-light camera program is "unfair," "deceptive," and/or "unconscionable" in one or more of the following ways:

- a) ATS threatens people, including Plaintiffs and the Class, with monetary penalties using unlawfully issued NOVs and/or UTCs, in violation of § 316.0083, Fla. Stat.;
- b) ATS does not reveal that neither the NOV nor the UTC has been reviewed by a TIEO or other law enforcement officer,;
- c) ATS sends a copy of the UTC to the applicable court, thereby unlawfully initiating a judicial proceeding, when Florida law only allows such transmission to be made by a TIEO (§ 316.650(c), Fla. Stat.); and

- d) As part of its unlawful profit-seeking activity, ATS also directly collects some of these penalties as well as additional fees incident to the payment of the penalties.

82. As a result of ATS's unfair, deceptive and/or unconscionable practices, Plaintiffs and all Class members have suffered, or will suffer, actual damages resulting from their payment of the penalties in the NOV's and/or UTCs, as well as any fees they incurred as a direct result of paying those penalties.

83. Plaintiffs and the Class are entitled, pursuant to § 501.211(1), Fla. Stat., to the following non-monetary relief:

- a) a permanent injunction to prevent ATS from continuing to engage in these unlawful practices, including ceasing all efforts to assist in the collection of unpaid penalties; and
- b) a declaratory judgment that ATS's above-mentioned conduct violates the FDTUPA.

84. Plaintiffs and Class Members are entitled to actual damages and all other relief allowable under FDUTPA, including the recovery of costs and reasonable attorneys' fees in pursuing these claims.

COUNT II

Unjust Enrichment

85. Plaintiffs and the Class incorporate by reference paragraphs 1 through 78 as if fully set forth herein, and further allege:

86. ATS issued unlawful NOV's and/or UTCs to Plaintiffs and the Class with the intent of inducing Plaintiffs and Class members to pay the listed penalties.

87. Whether Plaintiffs or the Class members subsequently paid the penalties to the local government or directly to an account maintained by ATS, they still conferred a benefit upon ATS, which profits from the success of its unlawful red-light camera program.

88. ATS voluntarily accepted and retained the resulting benefit of the income generated by its unlawful red-light camera program, both in the form of its contractual fees for running the program and additional fees generated by its website that facilitates the collection of these unlawful fines.

89. In light of the foregoing, it would be inequitable for ATS to be permitted to retain the benefit of its revenue it receives from its unlawful red-light camera program.

90. Accordingly, Plaintiffs and the Class members seek disgorgement and/or restitution of these benefits.

COUNT III

Violation of U.S. Constitutional Rights (42 U.S.C. § 1983)

91. Plaintiffs and the Class incorporate by reference paragraphs 1 through 78 as if fully set forth herein, and further allege:

92. Plaintiffs and the Class bring this claim under 42 U.S.C. § 1983, against ATS, acting in an official capacity for the contracting counties and municipalities.

93. Plaintiffs and the Class members have a property interest in not being threatened into paying unlawfully issued fines.

94. At all times material, ATS contracted with counties and municipalities throughout the State of Florida to perform public, governmental functions, including the review of red-light camera photographs and video to make initial determinations (or final rejections) of possible red-light violations, the issuance of NOVs, the issuance of UTCs, and the transmission of UTCs to

the applicable state court.

95. When performing these functions, it did so purporting to use the governmental authority delegated to it by the counties and municipalities with which it contracts. The Wandall Act requires that local governments issue NOVs and UTCs. The NOVs and/or UTCs ATS issued to Plaintiffs and members of the Class pose as official exercises of this police power reposed in the local governments.

96. Consequently, ATS was acting under color of state law when it performed these functions.

97. Through these actions, ATS denied Plaintiffs and Class members their rights to be free from the deprivation of property without due process. Specifically, Florida law confers on drivers within the State of Florida the right not to be fined for a red-light camera traffic infraction unless a TIEO or other duly licensed law enforcement officer issues the NOV and the subsequent UTC.

98. ATS's usurpation of the statutorily non-delegable functions of issuing NOVs and UTCs has subjected Plaintiffs and the Class to a loss of property interests (the penalties and associated fees) pursuant to a process that was void *ab initio*.

99. As a direct and proximate result of ATS's violation of 42 U.S.C. § 1983, Plaintiffs have suffered injuries and damages.

COUNT IV

Declaratory Judgment (28 U.S.C. § 2202)

100. Plaintiffs and the Class incorporate by reference paragraphs 1 through 78 as if fully set forth herein, and further allege:

101. Based on the conduct and facts alleged herein, and pursuant to 28 U.S.C. § 2202,

Plaintiffs seek a class-wide order for declaratory relief, including a declaratory judgment that ATS failed to comply with the statutory requirements of Fla. Stat. § 316.0083 for unlawfully issuing NOVs and UTCs and enforcing and collecting fines for same from July 1, 2010 to the present, as well as a declaratory judgment that, owing to these statutory violations, ATS was not lawfully entitled to issue NOVs or UTCs in Florida during that period of non-compliance, nor to collect fines related to same.

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, hereby demand:

- a) Certification of the proposed Class;
- b) Appointment of the Named Plaintiffs as representatives of the Class;
- c) Appointment of the undersigned counsel as counsel for the Class;
- d) A declaration that Defendants' actions, described fully above, violate § 1983, FDUPA, the Wandall Act and constitute unjust enrichment;
- e) An order enjoining ATS and/or related entities, as provided by law, from engaging in the unlawful conduct set forth herein;
- f) An award to Plaintiffs' Class of any monies paid pursuant to the unlawful conduct set forth herein, all damages recoverable under applicable law, pre- and post-judgment interest, attorneys' fees and allowable costs pursuant to Fla. Stat. § 501.211(2) and other applicable law;
- g) An order requiring ATS to relieve any class members of the obligation to pay any outstanding fines demanded based on the unlawful conduct set forth herein; and
- h) Such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of this action.

Dated: November 10, 2014

Respectfully submitted,

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