

IN THE COUNTY COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA.

STATE OF FLORIDA,

Plaintiff,

CASE: 05-2014-TR-011254-AXXX-XX
UTC: 3203 LBN

vs.

A----- REED,

Defendant.

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**DEFENDANT'S MOTION TO DISMISS UNIFORM TRAFFIC CITATION BECAUSE
OF THE UNLAWFUL CONTRACT BETWEEN COCOA BEACH AND AMERICAN
TRAFFIC SOLUTIONS**

COMES NOW, the Defendant, by and through the undersigned attorney and move this Honorable Court to dismiss the citations issued in the above-referenced cases as the following good cause will show:

1. The Defendant was issued a Uniform Traffic Citation by the City of Cocoa Beach/American Traffic Solutions ("ATS") for an alleged violation of Florida's red light camera statute, 316.0083.
2. The violation was alleged to have occurred in the City of Cocoa Beach, Brevard County Florida.
3. The City of Cocoa Beach has contracted with American Traffic Solutions "ATS" to install and maintain their red light cameras. In addition, the City contracts with ATS to process all Notices of Violation and Uniform Traffic Citations.
4. Fla. Stat. §316.0083(1)(b)4 states as follows

An individual may not receive a commission from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.

5. Paragraph 13 of Amendment I to the Contract between the City of Cocoa Beach and ATS to provide red light camera services, entitled "Fees And Payment" contains a "Flexible Payment Plan" provision This section, guarantees that the City of Cocoa Beach will recover enough revenue to cover the monthly fee established by ATS. It guarantees that if sufficient funds are not recovered, then ATS will reduce its monthly fee, and the shortfall is tolled until time to repay. The provision provides that if at the end of the term of the contract, that shortfall is not repaid by the City of Davie, that amount will be forgiven by ATS, and ATS agrees to waive its right to recover any outstanding balance.

6. This contractual provision is similar or identical to other provisions which have been found to be unlawful and contrary to statute. Specifically, in *State v. Machiavellopalet*, 2011-TI-071384 (2011) Broward County Court Judge DeLuca found that a similar contract entered into between the City of Sunrise and American Traffic Solutions was unlawful because the flexible payment plan provision violated Fla. Stat. §316.0083 (1)(b)4.

7. In the case of *State v. Adams*, 19 Fla, L. Weekly Supp. 744a (Broward County Court, May 2012), citing *State v. Casey et al*, an *en banc* panel of nine (9) County Court Judges in the Orlando area ruled that numerous contracts, including some by ATS, involved similar unlawful cost protection provisions in violation of Fla. Stat. §316.0083(1)(b)4. In this decision, the court relied upon the below listed *Daugherty* decision and found that the cost neutrality provision in the agreement between the City of Or-

lando and its vendor, LaserCraft, was unlawful. In the Casey decision, the City of Ocoee's contract with ATS was found to be unlawful and it contains the identical language as ATS's contract with the Cocoa Beach.

8. In *People v. Daugherty*' 130 Cal. Rptr. 3d 837 (2011), the court found that a similar flexible payment provision was unlawful because it violated the California vehicle code's prohibition against these type of provision. The Daugherty court aptly articulated how the cost neutrality provision works: To illustrate, if only one citation was issued every month for the period of the contract, the vendor, in our case, ATS, would never receive the full monthly payment it would otherwise receive if there were sufficient citations issued to cover the monthly fixed fee. In other words, ATS's full payment is dependent on the issuance of a sufficient number of citations. Dismissal is required because the City of Cocoa Beach, and thus, its Police Department, has knowingly entered into an unlawful contract, thereby giving incentive to a for-profit corporation, ATS, to generate violations, all done with law enforcement's knowledge. This is an unacceptable due process violation that should result in the dismissal of the defendants' uniform traffic citations. *State v. Adams*, 19 Fla. L. Weekly Supp. 744a (Broward County Court, May 2012)

9. On May 8, 2014, Brevard County Court Judge John Murphy, in a written opinion, found that the contract between ATS and City of Cocoa Beach violated the law, and found dismissal the appropriate remedy. See Order, Exhibit "A"

10. On June 5, 2014, Brevard County Court Judge David C. Koenig, considered Judge John Murphy's aforementioned opinion and upheld Judge Murphy's written opinion, and found dismissal the appropriate remedy in *State v. Hewson* (Case # 05-2013-TR-007802). See Order, Exhibit "B"

WHEREFORE, the Defendant in the instant matter prays this Honorable Court dismiss the uniform traffic citation for violation the provisions of 316.0083(1)(b)4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above motion and the Exhibit was served upon the Plaintiff, Officer E. Koller, . Cocoa Beach Police Department, via email on this 28th day of July, 2014 at e-----@cityofcocoabeach.com.

Respectfully submitted,

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