IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

PAUL FEDER, *et al*,	)	
	)	
Plaintiffs,	)	
v.	)	Cause No.: 3:14-cv-00761-MJR-SCW
	)	
CITY OF EAST ST. LOUIS, ILLINOIS, *et al*,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

COME NOW the Defendants, CITY OF EAST ST. LOUIS, ILLINOIS, a municipal corporation, ALVIN PARKS, in his official capacity as Mayor the City of East St. Louis, Illinois, and BLUE LINE SOLUTIONS, LLC, a corporation, by and through their undersigned attorneys, and pursuant to Local Rule 7.1(c), submit their combined Motion and Memorandum of Law in Support of their Motion to Dismiss pursuant to Federal Rules of Civil Procedure Rule 12(b)(6). In support of Defendants' Motion, Defendants state as follows:

ALLEGATIONS IN THE COMPLAINT

The City of East St. Louis ("City") adopted Ordinance No. 14-10001 ("Ordinance") authorizing its Police Department to use photo lidar/laser equipment as part of the City's speed enforcement efforts. (Doc.1, Exh. 1). Unlike automated photo speed enforcement systems, such as red light cameras, the photo lidar/laser is operated by a police officer. (Doc. 1, Exh. 1). In particular, the officer visually observes the traffic and uses the photo lidar/laser unit to determine if a vehicle is in violation of the speed limit. (Doc. 1, ¶ 2). If the unit detects a speed greater than the speed limit, it photographs the vehicle's license plate. (Doc. 1, ¶ 2). The police officer has the option to conduct a traffic stop of the speeding vehicle and issue a citation under the Illinois Motor

Vehicle Code for speeding or not stop the vehicle and issue a photo speed violation under the Ordinance. (Doc. 1, Exh. 1).

A violation charged under the Ordinance is a civil matter. (Doc. 1, Exh. 1). Violations charged under the Ordinance are subject to a fine starting at $100.00 for five to ten miles per hour over the speed limit. (Doc. 1, Exh. 1). The fine increases depending upon the amount the vehicle's speed exceeded the legal limit. (Doc. 1, Exh. 1). Violations of the Ordinance are not reported to state agencies that regulate driver's licenses or to automobile insurance companies. (Doc. 1, ¶ 23(a), Exh. 1).

The City contracted with Blue Line Solutions LLC ("BLS") to provide the photo lidar/laser equipment. (Doc. 1, ¶¶ 1, 2-4). Notices of Violations of the Ordinance are sent by BLS to the registered owner of the motor vehicle that the police officer observed speeding. (Doc. 1, ¶¶ 1, 2-4). The Ordinance imposes liability based on ownership of the speeding vehicle without regard to who was operating it at the time. (Doc. 1, Exh. 1). Registered owners could avoid any fine by providing the identity of the person who was operating their vehicle at the time of the alleged violation. (Doc. 1, ¶¶ 15-17).

The Notices of Violation provided information on the vehicle along with the date, time and place of the violation. (Doc.1, Exh. 1). Said Notices also inform the owner of the civil nature of the charge and the fact that no points will be assessed to the owner's driver's license. (Doc. 1, Exh. 1). The Notice of Violation further provides two pages of information. (Doc. 1, Exh. 1). The information includes the amount of the assessed fine and the methods for paying the fine. (Doc. 1, Exh. 1). The Notice also informs the recipient of their right to request a hearing to dispute the charge and how to request the hearing. (Doc. 1, ¶¶ 17, 21). The Notice further provides the time frame for paying the fine or requesting the hearing. (Doc. 1, Exh. 1). Hearings to contest the

charge are conducted as an administrative proceeding in the City's Regulatory Affairs Court. (Doc. 1, ¶¶ 17- 21).

In this case, each of the Plaintiffs received a Notice of Violation informing them that a motor vehicle registered to them was operated at a speed in excess of the speed limit as determined by a City police officer operating a lidar/laser unit. (Doc. 1, Exh. 1). Plaintiff Feder received a Notice of Violation because his vehicle was "clocked at traveling 68 m.p.h. in a construction zone" where the posted speed limit was 45 m.p.h. (Doc. 1, ¶ 23(a)). He requested an administrative hearing rather than pay the fine. (Doc. 1, ¶ 8). Plaintiff Durako also did not pay the fine. (Doc. 1, ¶ 8). Plaintiffs Sanders, Crawford, Orlet and Rand did pay the fine rather than dispute the charge in a hearing. (Doc. 1, ¶ 8).

Questions as to the City's authority to implement its Photographic Speed Enforcement Program under Illinois law were publically raised by the State's Attorney for St. Clair County. (Doc. 1, ¶ 5). The City ceased enforcement of the Ordinance as of May 28, 2014. (Doc. 1, ¶ 6; The City announced that it will no longer enforce the Ordinance. (Doc. 1, ¶ 7). The City dismissed all pending charges under the Ordinance and will take no further action on them. (Doc. 1, ¶ 22). The City and BLS will not accept further payments of fines paid under the Ordinance. (Doc. 1, ¶ 7). The City advised those requesting hearings that their tickets were dismissed. (Doc. 1, ¶ 22). The City and BLS have not refunded any of the fines that were paid for violation of the Ordinance. (Doc. 1, ¶ 8).

On May 30, 2014, Plaintiffs filed this action in an Illinois circuit court against Defendants as representatives of a putative class of others similarly situated to themselves. (Doc. 1). The case was timely removed to this Court by the City with the consent of BLS. (Doc. 1).

MOTION TO DISMISS STANDARD OF REVIEW

When ruling on a motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), a court assumes as true all well-pleaded facts and reasonable inferences, and construes these in the light most favorable to the plaintiff. *See* Fries v. Helsper, 146 F.3d 452, 457 (7th Cir. 1998) citing Wiemerslage Through Wiemerslage v. Maine Twp. High Sch. Dist. 207, 29 F.3d 1149, 1151 (7th Cir. 1994). A court must determine whether, based on those assumptions and inferences, the plaintiff has a right to relief. Id. A motion to dismiss tests the sufficiency of the complaint, not the merits of the suit. *See* Gibson v. City of Chicago, 910 F.2d 1510, 1520 (7th Cir. 1990). A claim may be dismissed only if it is beyond doubt that under no set of facts would a plaintiff's allegations entitle him or her to relief. *See* Travel All Over the World, Inc. v. Kingdom of Saudi Arabia, 73 F.3d 1423, 1429-30 (7th Cir. 1996) *citing* Conley v. Gibson, 355 U.S. 41, 45-46, (1957) (reversed). The Supreme Court has noted that it is not enough for a complaint to avoid foreclosing possible bases for relief; it must actually suggest that the plaintiff has a right to relief, (*see* Bell Atlantic v. Twombly, 550 U.S. 544, 561-563 (2007)), by providing allegations that "raise a right to relief above the speculative level." Id. at 555.

To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *See* Twombly, 550 U.S. at 570 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to prove the 'grounds' of his 'entitlement to relief' require more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. As such, "bare assertions...amount[ing] to nothing more than a 'formulaic recitation of the elements' . . . are not entitled to be assumed true" when being considered in a Motion to Dismiss for failure to state a claim. *See* Ashcroft v. Iqbal, 556 U.S. 662 (2009).

After the Supreme Court's ruling in Iqbal, Courts are to use a two-pronged approach to evaluate the sufficiency of a complaint. First, although a Court must accept as true all of the allegations contained in the complaint, that tenet is inapplicable to legal conclusions, and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *See* Hayden v. Paterson, 594 F.3d 150, 161 (2nd Cir. 2010) citing Iqbal, 556 U.S. at 678. In other words, the Court must accept all of the complaint's well-pled facts as true, but may disregard any legal conclusions. Second, a Court should determine whether the well-pleaded factual allegations, assumed to be true, plausibly give rise to an entitlement of relief. Id. In other words, a complaint has to show an entitlement with its facts, not merely allege the plaintiff's entitlement to relief. *See* Iqbal.

A court will "dismiss any claim that, even when construed in the light most favorable to plaintiff, fails to plead sufficiently all required elements of a cause of action." *See* Student Loan Marketing Ass'n v. Hanes, 181 F.R.D. 629, 634 (S.D. Cal., 1998). To the extent that the pleadings can be cured by the allegation of additional facts, the plaintiff should be afforded leave to amend. *See* Cook, Perkiss, and Liehe, Inc. v. Northern California Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990).

ARGUMENTS

A. Plaintiffs' Complaint Fails to Comply with Rules 8 and 10 of the Federal Rules of Civil Procedure

Rule 8 of the Federal Rules of Civil Procedure is clear in that in requires a "short and plain statement of the claim showing that the pleader is entitled to relief." *Fed.R.Civ.P. 8(a)(2).* In particular, under Rule 8, a complaint "must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is." *See* Wade v. Hopper, 993 F.2d 1246 (7th Cir. 1993), *cert. denied*, 510 U.S. 868 (1993); *see also* Jennings v.

Emry, 910 F.2d 1434 (7th Cir. 1990) (stating that a complaint "must be presented with clarity sufficient to avoid requiring a district court or opposing party to forever shift through its pages in search of what it is the plaintiff asserts). Further, Rule 10 requires the pleader to state his claims in separate numbered paragraphs, each limited as far as practicable to a single set of circumstances, and also requires that each claim be stated in a separate count, if doing so would promote clarity. *Fed.R.Civ.P. 10.* The primary purpose of these rules is to give defendants fair notice of the claims against them and the grounds supporting the claims. *See* Killingsworth v. HSBC Bank Nev., N.A., 507 F.3d 614 (7th Cir. 2007).

Here, Plaintiffs' have failed to put Defendants on notice of the specific claims being asserted against them. In particular, at the most basic level, Plaintiffs' Complaint fails for having impermissibly and improperly "lumped" all the Defendants together. Further, Plaintiffs' Complaint fails because of its unintelligibility. The preceding are grounds for dismissal. Specifically, where lack of organization and basic coherence render a complaint too confusing to determine the facts that constitute the alleged wrongful conduct, dismissal is an appropriate remedy. *See* United States ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374 (7th Cir. 2003). *See also* Davis v. Ruby Foods, Inc., 269 F.3d 818 (7th Cir. 2001) (The dismissal of a complaint on the ground that it is unintelligible is unexceptionable).

Here, Plaintiffs' Complaint is not only unintelligible, but also contains vague, confusing and conclusory articulation of the factual and legal basis for the claims. Further, despite its length, thirty-three (33) pages, it is unclear what claims are being asserted against each Defendant. It is also unclear what constitutes the core of the claims against the Defendants. For example, Plaintiffs' do not provide any basis for asserting a 42 U.S.C. §1983 claim; rather, they merely allege, "That the common questions of fact and law are: whether the scheme violated state and

federal law, whether an injunction should issue to totally bring the scam to a halt for all time, whether the claimants are entitled to declaratory relief, whether 42 U.S.C. Section 1983 and 1988 attorneys (*sic*) fees and costs should be recovered if the Plaintiffs prevail, the amount of those fees, whether the claimants are entitled to restitution, and, if so, how much they are due, whether the Defendants are liable for converting money which belonged to others, and, if so, whether the corporate defendant, which operates many of these schemes in other states and cities, is liable for punitive damages in this case." (Doc. 1, Page 7).

Additionally, Plaintiffs' Complaint completely fails to tie the actions of the three (3) different named Defendants, including a City, a mayor, and a private corporation, to the injuries the Plaintiffs allegedly suffered. Rather, Plaintiffs merely make vague references to random acts. For example, in Paragraph 3, Plaintiffs allege, "Beginning in March, 2014, the Defendants began to operate its outlaw scheme, an outlaw scheme because it was operated in total disregard of the Illinois Motor Vehicle Code, the Illinois Constitution, and the federal Constitution, instructing ESL police officers to clock allegedly offending speeding cars and trucks, without stopping those vehicles, and without making any effort to find out the identities of the drivers of those vehicles. Moreover, the operators of the allegedly speeding vehicles were never photographed with the laser speed cam equipment." (Doc. 1, Page 3). These vague references are impermissible under the Federal Rules of Civil Procedure. Specifically, vague references to a group of "defendants" without specific allegations tying the individual defendant to the alleged unconstitutional conduct, do not raise a genuine issue of material fact with respect to those defendants. *See* Alejo v. Heller, 328 F.3d 930, 936 (7th Cir. 2003) (finding dismissal of named defendant proper where plaintiff failed to allege defendant's personal involvement in the alleged wrongdoings); *see also* Starzenski v. City of Elkhart, 87 F.3d 872, 879 (7th Cir. 1996).

Further, in Grieveson v. Anderson, the Seventh Circuit granted defendants' Motion to Dismiss in a §1983 claim when the plaintiff's complaint made vague references to a group of "defendants" without specific allegations tying the individual defendants to the alleged unconstitutional conduct. *See* Grieveson, 538 F.3d 763 (7th Cir. 2008). In Grieveson, the Seventh Circuit recognized the reasoning behind Alejo that a failure to make specific allegations of unconstitutional conduct of the individual defendants results in a failure to raise a genuine issue of material fact with respect to those defendants, which supports a granting of the motion to dismiss. Id. at 777-778.

Where, as here, a complaint simply lumps defendants together and fails to distinguish their conduct, such allegations fail to give adequate notice to the defendants as to what they did wrong, and fails to meet the pleading standards of Federal Rules of Civil Procedure. Without alleging facts against the defendants individually sufficient to sustain the claims, a complaint must be dismissed as against those defendants. *See* Southerland v. New York City Housing Authority, 2010 WL 4916935 (E.D.N.Y. 2010). Here, as Plaintiffs' Complaint completely fails to meet the pleading standards of the Federal Rules of Civil Procedure, a dismissal is warranted.

B. City's Decision Not To Enforce Ordinance Renders the Declaratory Judgment Claim Moot

In Count I of their Complaint, Plaintiffs request a declaratory judgment from the Court declaring the City's Photographic Speed Enforcement Program violates the Illinois Motor Vehicle Code, the U.S. Constitution and the Illinois Constitution.

Article III of the Constitution limits the jurisdiction of federal courts to cases or controversies, which is to say to actual legal disputes. Const. Art. 3, § 2, cl. 1. Declaratory Judgments are permitted but are limited—also to avoid violating Article III—to "case[s] of actual controversy," 28 U.S.C. § 2201(a), that is, actual legal disputes.

Under Article III of the Constitution, as interpreted by the courts, cases that do not involve "actual, ongoing controversies" are moot and must be dismissed for lack of jurisdiction. Stone v. Board of Election Com'rs for City of Chicago, 643 F.3d 543, 545 (7th Cir. 2011) ("[F]ederal courts are without power to decide questions that cannot affect the rights of litigants in the case before them."); Stotts v. Cmty. Unit Sch. Dist. No. 1, 230 F.3d 989, 990–91 (7th Cir. 2000). A declaratory judgment request cannot sustain a live case or controversy where granting the declaratory judgment would not "affect[ ] the behavior of defendant toward the plaintiff". Rhodes v. Stewart, 488 U.S. 1, 4 (1988); Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 241 (1936). Cases that do not involve "actual, ongoing controversies" are moot and must be dismissed. Stotts, 230 F.3d at 990–991.

It has been held that voluntary cessation of putatively illegal conduct ordinarily will not moot a controversy and prevent its adjudication by a federal court except where there is no reasonable expectation that the putatively illegal conduct will be repeated, and there are no remaining effects of the alleged violation. Ragsdale v. Turnock, 841 F.2d 1358, 1364-1365 (7th Cir. 1988). When the defendants are public officials, however, the court places greater stock in their acts of self-correction, so long as they appear genuine. Ragsdale, 841 F.2d at 1365; Magnuson v. City of Hickery Hills, 933 F.2d 562 (7th Cir. 1991) (city officials removed plaintiffs from list of property owners they intended to pursue for illegally discharging storm water into their sanitary sewer lines); McCrary v. Poythress, 638 F.2d 1308 (5th Cir.), *cert. denied,* 454 U.S. 865 (1981) (election officials conceded that they had erred by attempting to compel a political candidate to file certain financial disclosure reports and wrote the candidate abandoning their request for such reports) and Northern Virginia Women's Medical Center v. Balch, 617 F.2d 1045 (4th Cir.1980) (Equal Protection challenge to local prosecuting attorney's policy of not enforcing

a state trespass statute against anti-abortion protestors who unlawfully entered and blocked access to an abortion clinic held moot on the prosecutor's assertion that the non-enforcement policy had been abandoned).

Here Plaintiffs seek a declaratory judgment that the Ordinance violates the Illinois law. They also seek a declaratory judgment that the Ordinance violates due process standards under the United States and Illinois Constitutions. Yet the Complaint establishes that: (a) the City ceased enforcement of the Ordinance; (b) the City dismissed all pending charges under the Ordinance and announced that it will take no further action on them before this suit was filed; (c) the City and BLS announced before this suit was filed that they will not accept further payments of fines paid under the Ordinance; and, (d) the City advised those requesting hearings that their tickets were dismissed before this suit was filed.. In addition, Plaintiffs admitted in their Complaint that there was no adverse impact upon their driving records since the charged violation was not reported to the state agencies that regulate their driving privileges.

No actual controversy over the validity or constitutionality of the Ordinance remains between the parties for the Court to decide. As such, Plaintiffs' declaratory judgment claim should be dismissed as moot.

C. Injunction Action To Prohibit Enforcement of the Ordinance is Moot

In Count I of their Complaint, Plaintiffs request an injunction to prohibit enforcement of the Ordinance. As noted in Section A above, the City is no longer enforcing the Ordinance and will not in the future without further authority from the Illinois legislature. The requirement that a justiciable controversy exists applies both to actions requesting a declaratory judgment and those seeking equitable relief. Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 241 (1936). Plaintiffs no longer face a present harm for the Court to remedy by means of an injunction

prohibiting enforcement of the Ordinance. As such, Plaintiffs' claim for injunctive relief against enforcement of the Ordinance should be dismissed as moot.

D. Injunction Action To Influence The City's Future Legislation Should be Denied

In Count I of their Complaint, Plaintiffs request an injunction to require any future legislative action by the City to enact a new Ordinance regarding photographic speed enforcement to adhere to certain requirements.

The federal courts recognize ripeness as a prudential limitation on their jurisdiction—a manifestation of Article III's limitation of federal jurisdiction to "cases" and "controversies." *See* Reno v. Catholic Soc. Servs., Inc., 509 U.S. 43, 56 (1993). A claim is not ripe for judicial review "if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300 (1998) (internal citations and quotation marks omitted). In the context of Plaintiffs' request for an injunction against the City regarding any future Ordinance, it is axiomatic that such a request is not ripe until the City actually takes action to enact such an ordinance in the future. Cf. Patel v. City of Chicago, 383 F.3d 569, 572 (7th Cir. 2004) ("The basic rationale of the ripeness doctrine is to prevent the courts...from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.") Plaintiffs' request for an injunction directed against any future legislative enactments of the City that has not occurred yet and may never occur are not ripe, and therefore, should be dismissed.

E. The Voluntary Payment Doctrine Bars Plaintiffs' Conversion Claim

In Count II, Plaintiffs seek a refund of their payments under a theory of conversion. To prove conversion, a plaintiff must establish under applicable Illinois law that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the

property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property. Cirrincione v. Johnson, 184 Ill.2d 109, 114 (Ill.1998). "The essence of conversion is not acquisition by the wrongdoer but a wrongful deprivation of the owner thereof." Jensen v. Chicago and W. Ind. R.R. Co., 94 Ill.App.3d 915, 932 (Ill.App.1981).

The voluntary payment doctrine has long been recognized in common law and accepted by the Illinois courts. The doctrine, stated succinctly, maintains that "[a]bsent fraud, coercion or mistake of fact, monies paid under a claim of right to payment but under a mistake of law are not recoverable." Randazzo v. Harris Bank Palatine, N.A., 262 F.3d 663, 668 (7th Cir.2001) (quoting Smith v. Prime Cable of Chicago, 276 Ill.App.3d 843, 847 (1995)) *see also* Spivey v. Adaptive Marketing LLC., 622 F.3d 816 (7th Cir. 2010)(same) and Harris v. ChartOne, 362 Ill.App.3d 878, 881 (Ill.App.2005) ("It has been a universally recognized rule that absent fraud, duress, or mistake of fact, money voluntarily paid on a claim of right to the payment cannot be recovered on the ground that the claim was illegal."). Exceptions to the voluntary payment doctrine are treated under Illinois law as substantive elements that must be pled in the plaintiff's complaint. *E.g.*, Smith, 276 Ill.App.3d 843 (Ill. App. 1995) (dismissed after plaintiff failed to plead facts indicating compulsion); Jursich v. Arlington Heights Fed. Sav. & Loan Ass'n, 110 Ill.App.3d 847 (Ill.App.1982) (dismissed after plaintiff failed to plead facts indicating fraud).

The Illinois courts have explained the reason for the voluntary payment rule stating:

> "The reason for the rule * * * and its propriety, are quite obvious when applied to a case of payment on a mere demand of money unaccompanied with any power or authority to enforce such demand, except by a suit at law. In such case, if the party would resist an unjust demand, he must do so at the threshold. The parties treat with each other on equal terms, and if litigation is intended by the one of whom the money is demanded, it should precede payment. When the person making the payment can only be reached by a proceeding at law, he is bound to make his defense in the first instance, and he cannot postpone the litigation by paying the demand in silence or under a reservation of right to litigate the claim, and afterward sue to recover the amount paid.

Smith, 276 Ill.App.3d at 848 (quoting 66 Am.Jur.2d *Restitution & Implied Contracts* § 94, at 1035-36 (1973)). The Seventh Circuit explained in Randazzo that the voluntary payment doctrine "ensures that those who desire to assert a legal right do so at the first possible opportunity; this way, all interested parties are aware of that position and have the opportunity to tailor their own conduct accordingly." Randazzo, 262 F.3d at 668.

The Illinois Appellate Court in Berg v. City of Chicago, 97 Ill.App.2d 410 (Ill.App.1968) involved two consolidated class actions each challenging the validity of the City of Chicago's traffic ordinances on the basis that the City lacked the authority to enact them. Berg, 97 Ill.App.2d at 411. One of the suits was brought by individuals who had been found guilty of violation of the ordinances and paid the fine foregoing any appeal of the finding. Id., 97 Ill.App.2d at 421. Those plaintiffs sought reimbursement of their payment of the fines because the traffic ordinances under which they were imposed were held invalid. Id. The Court in Berg affirmed dismissal of the claims of the plaintiffs who paid the fines holding that those claims were barred by the voluntary payment doctrine. Id., 97 Ill.App.2d at 425.

In this case, Plaintiffs' conversion claims are based upon an assertion that Plaintiffs are entitled to have the fines they paid the City and/or BLS returned because the Ordinance is invalid or unconstitutional. To succeed on their conversion claim, the Plaintiffs' must have an absolute

and unconditional right to the immediate possession of the fines they paid such that it is wrongful for the City and BLS not refund them. Under the voluntary payment doctrine Plaintiffs cannot establish these essential elements of their conversion claim. As such, Count II should be dismissed with prejudice.

F. Plaintiffs Have Failed to Allege Violations of 42 U.S.C. §1983

In their lawsuit, it appears that Plaintiffs are attempting to couch their Complaint pursuant to 42 U.S.C. §1983. In particular, Plaintiffs allege that their Complaint is "seeking declaratory judgment, injunctive relief, damages and class action status, pursuant to 42 U.S.C. §1983, the U.S. Constitution and the Illinois Constitution." (Doc. 1, Page 1). Section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. *See 42 U.S.C. §1983.*

Section 1983 provides remedies for deprivations of rights established in the Constitution or federal laws, but does not, by its own terms, create substantive rights. *See* Baker v. McCollan, 443 U.S. 137, 145 (1979); *see also* Ledford v. Sullivan, 105 F.3d 354, 356 (7th Cir. 1997).

To recover under §1983, the plaintiff must establish that (1) defendants acted under color of state law, (2) that their actions resulted in a deprivation of the plaintiff's constitutional rights, and (3) that the action of the defendants proximately caused the constitutional violation. *See* Board of Regents of State Colleges v. Roth, 408 U.S. 564, 570 (1972); *see also* Crowder v. Lash, 687 F.2d 996, 1002 (7th Cir. 1982). Therefore, Section 1983 provides a party with a cause of action

against persons acting under color of state law who cause "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983.

A municipality is held liable as a "person" within the meaning of §1983 if a municipal "policy or custom" is the cause of the constitutional violation. *See* Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978). "A municipality is not liable for the actions of an employee, however, simply because that employee committed a tortious act." Id. at 691. Pursuant to the holding in Monell, a municipality cannot be held liable solely because its employee is a tort-feasor. Id. Instead, it is when execution of a government's policy or custom, whether may be its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible for under §1983. Id. at 695.

Moreover, just as a municipal corporation is not vicariously liable upon a theory of respondeat superior for the constitutional torts of its employees, a private corporation is not vicariously liable under §1983 for its employees' deprivations of others' civil rights. *See* Shields v. Illinois Department of Corrections, 746 F.3d 782 (7th Cir. 2014); Gayton v. McCoy, 593 F.3d 610 (7th Cir. 2010); Rodriguez v. Plymouth Ambulance Service, 577 F.3d 816 (7th Cir. 2009); Woodward v. Correctional Medical Services of Illinois, Inc., 368 F.3d 917 (7th Cir. 2004). Specifically, private corporations are able to take advantage of the holding in Monell. *See* Shields v. Illinois Department of Corrections, 746 F.3d 782 (7th Cir. 2014). In particular, a private corporation, such as Defendant Blue Line Solutions, LLC, cannot be held liable under §1983 unless the constitutional violation was caused by an unconstitutional policy or custom of the corporation itself. Respondeat superior liability does not apply to private corporations under §1983. Id.; *see also* Iskander v. Village of Forest Park, 690 F.2d 126 (7th Cir. 1982).

The first inquiry in any case alleging municipal liability under §1983 is to determine whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *See* City of Canton, Ohio v. Harris, 489 U.S. 378, 385 (1989). There are two (2) ways for a plaintiff to establish municipal liability under §1983: policy or custom. *See* Watson v. Abington Township, 478 F.3d 144, 155 (3rd Cir. 2007). Policy is made when a decision maker possessing final authority to establish municipal policy with respect to a given action, issues an official proclamation, policy or edict. *See* Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986). On the other hand, custom can be proven by showing that a "given course of conduct, although not specifically endorsed or authorized by law is so well-settled and permanent as virtually to constitute law." *See* Watson, 478 F.3d at 155-156.

In their Complaint, Plaintiffs have failed to state a Monell claim. Specifically, the Plaintiffs have failed to show that any of the Defendants acted pursuant to a municipal policy as required under Monell. Further, in their Complaint, Plaintiffs have failed to state a claim against Defendant Blue Line Solutions, LLC. Specifically, the Plaintiffs have failed to show that the alleged violations were caused by an unconstitutional policy or custom of the corporation itself.

A municipality can only be held liable under §1983 if a custom or policy of the municipality was a cause of the plaintiff's injury. *See* Latuszkin v. City of Chicago, 250 F.3d 502, 504-505 (7th Cir. 2001). In order to state a §1983 claim against a municipality, the plaintiff must allege that the "execution of a government's policy or custom...inflict[ed] the injury." *See* Monell, 436 U.S. at 694. Conclusory "threadbare" allegations that merely recite the elements of a cause of action will not defeat a motion to dismiss. *See* Iqbal. Accordingly, a conclusory allegation regarding the existence of a policy or custom unsupported by factual allegations is insufficient to state a Monell claim. Additionally, a private corporation can only be held liable under §1983 if an "impermissible

policy" or a "constitutionally forbidden" rule or procedure of the corporation was the "moving force of the constitutional violation." *See* Monell; *see also* Iskander v. Village of Forest Park, 690 F.2d 126 (7th Cir. 1982).

In this case, Plaintiffs' Complaint is completely devoid of any facts, or even allegations, establishing the existence of any "official policy" of the Defendant City of East St. Louis and/or the existence of any "unconstitutional policy or custom" of Defendant Blue Line Solutions, LLC.

In paragraph 1 of the Complaint, Plaintiffs allege that "This suit seeks class action status to stop East St. Louis (hereinafter, "ESL"), its mayor and its private business partner, Blue Line Solutions, LLC (hereinafter, "Blue Line"), from operating its "laser speed cam ticket" scheme (hereinafter, "the scheme"), now or in the future, and to stop them from seeking to hold hearings pursuant to its city ordinance number 14-10001 (which, effective this year, authorized the scheme), and to stop them from fining or financially penalizing citizens who own cars and who received speed cam notices from ESL, and to stop Blue Line from contacting collection agencies about trying to unlawfully collect fines and penalties Blue Line and the City of ESL illegally claim pursuant to the scheme. It also seeks recovery from the Defendants of all of their ill gotten (*sic*) gains obtained by their operating of the speed cam scheme. Finally, it seeks damages and restitution against the Defendants under 42 U.S.C. Section 1983 and 1988, the Illinois State Constitution and the common law of conversion." (Doc. 1, Page 2).

In Paragraph 14, Plaintiffs further allege, "That the common questions of fact and law are: whether the scheme violated state and federal law, whether an injunction should issue to totally bring the scam to a halt for all time, whether the claimants are entitled to declaratory relief, whether 42 U.S.C. Section 1983 and 1988 attorneys (*sic*) fees and costs should be recovered if the Plaintiffs prevail, the amount of those fees, whether the claimants are entitled to restitution, and, if so, how

much they are due, whether the Defendants are liable for converting money which belonged to others, and, if so, whether the corporate defendant, which operates many of these schemes in other states and cities, is liable for punitive damages in this case." (Doc. 1, Page 7).

In Paragraph 28, Plaintiffs allege, "That the ordinance's operation and terms violated the Constitution's prohibition against excessive fines imposed by government." (Doc. 1, Page 12). Further, in Paragraph 32, Plaintiffs allege, "That none of the fines and penalties collected or sought pursuant to the scheme were ever reduced to a court judgment; in light of this fact, the entire ESL/Parks/Blue Line speed cam ticket was entirely based on a bluff: the Defendants were conning the alleged violators (the ticketed) vehicle owners into thinking that these citizens actually owed the fines and penalties, when in fact they did not." (Doc. 1, Page 14).

Plaintiffs' Complaint is a narrative of alleged random bad acts by Defendants. However, nowhere in Plaintiffs' thirty-three (33) page Complaint, or in any of the two (2) counts set forth in said Complaint, do Plaintiffs allege, or even attempt to reference, any "official policy" of the Defendant City of East St. Louis and/or any "unconstitutional policy or custom" or Defendant Blue Line Solutions, LLC. On its face, the Complaint fails to contain sufficient factual allegations to allege any §1983 cause of action. As such, Plaintiff's Complaint should be dismissed for failure to state a cause of action.

G. Plaintiffs Fail to Identify Any Specific Official with Final Policy-Making Authority As Required Under §1983

In addition to Plaintiff's failure to allege any official policy and/or custom of Defendants', Plaintiffs have failed to identify any person with policy-making authority who might have been responsible for a policy which resulted in constitutional violations.

A §1983 plaintiff may establish municipal liability in one of three ways. First, the plaintiff may prove that a municipal employee committed a constitutional violation pursuant to a formal

governmental policy or custom. *See* Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992). Second, the plaintiff may establish that the constitutional tort was committed by an official with "final policy-making authority," and, thus, the challenged action itself constituted an act of official governmental policy. Id.; *see also* Pembaur, 475 U.S. at 480-481. Third, the plaintiff may prove that an official, with final policy-making authority, ratified a subordinate's unconstitutional decision or action and the basis for it. *See* Gillette, 979 F.2d at 1346-1347; *see also* City of St. Louis v. Paraprotnik, 485 U.S. 112, 127 (1988).

If Plaintiffs are attempting to rely on the "final policy-making authority" cause of action, they have failed to identify such a final policy-maker, failed to identify the actions of said "final policy-making authority" that would have resulted in his alleged constitutional violations, and failed to allege exactly what actions this alleged "final policy-making authority" took which would result in liability to any of the Defendants. As such, to the extent that Plaintiffs proceed on the theory that the alleged wrongful acts were committed by an official with "final policy-making authority" or that an official with "final policy-making authority" ratified any of the alleged wrongful acts, Plaintiffs have completely failed to identify the official with "final policy-making authority." In particular, Plaintiffs' Complaint is completely devoid of any reference to the phrase "final policy-making authority," and, as such, should be dismissed.

H. Plaintiffs' Allegations Against Defendant Alvin Parks are Duplicative and Should be Dismissed

While Plaintiffs' Complaint fails to delineate specific allegations against Defendant Alvin Parks, any allegation against this Defendant would be duplicative of Plaintiffs' §1983 claims against the City of East St. Louis.

The essence of Plaintiffs' Complaint against Defendant Parks, even though it does not delineate specific allegations against the Defendants, is that Defendant Parks acted in his official

capacity as an employee of the City of East St. Louis. As such, the claims against Defendant Parks are actually claims against the City of East St. Louis, Illinois. *See* Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1980) (A suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself).

As best can be gleaned from the Complaint, every claim that Plaintiffs have brought against Defendant Parks, in his official capacity, also includes the City of East St. Louis, Illinois. Consequently, Plaintiffs' claims, whatever they may be, against Defendant Parks, are superfluous, as Plaintiffs may recover any damages they are entitled to through their claims against the municipal Defendant. *See* Franklin v. Zaruba, 150 F.3d 682 (7th Cir. 1998) (A suit against a defendant in his official capacity is actually against the governmental entity).

In the alternative, Plaintiffs' Complaint fails to allege that Defendant Parks participated in the alleged constitutional violations, and, as such, he should be dismissed from this cause of action. *See* Vance v. Peters, 97 F.3d 987 (7th Cir. 1996) (Individuals are not liable under §1983 unless they caused or participated in the alleged constitutional deprivation).

Here, Plaintiffs' Complaint lacks any allegation that Defendant Parks personally participated in the constitutional wrongdoing. Rather, Plaintiffs' merely allege that Defendant Parks announced to the public that the City of East St. Louis was suspending its speed cam system and announced that no refunds would be forthcoming. (Doc. 1, Pages 4 and 5). These threadbare allegations are not sufficient as a basis for §1983 liability predicated on personal liability and fault. As such, the Court should dismiss all claims against Defendant Parks.

WHEREFORE, Defendants, CITY OF EAST ST. LOUIS, ILLINOIS, a municipal corporation, ALVIN PARKS, in his official capacity as Mayor the City of East St. Louis, Illinois,

and BLUE LINE SOLUTIONS, LLC, a corporation, request the Court to enter an order dismissing the Plaintiffs' claims with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2014, I electronically filed the COMBINED MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT with the Clerk of the U.S. District Court, using the CM/ECF system reflecting service of same to be served on:

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From: ilsd_nef@ilsd.uscourts.gov
Sent: Thursday, August 14, 2014 4:53 PM
To: ilsd_nef@ilsd.uscourts.gov
Subject: Activity in Case 3:14-cv-00761-MJR-SCW Feder et al v. City of East St. Louis, Illinois et al Motion to Dismiss for Failure to State a Claim

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U.S. District Court

Southern District of Illinois

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Case Number: 3:14-cv-00761-MJR-SCW
Filer: Blue Line Solutions, Inc.
City of East St. Louis, Illinois
Alvin Parks
Document Number: 17

Docket Text:
MOTION to Dismiss for Failure to State a Claim *and Memorandum of Law in Support* by Blue Line Solutions, Inc., City of East St. Louis, Illinois, Alvin Parks. Responses due by 9/18/2014 (Sabo, John)

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