

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

MAHMOUD SAAD, Individually, And
ZIHRA SAAD, Individually,

Plaintiffs

- Vs -

MICHAEL KRAUSE, Individually And In His
Official Capacity, CITY OF DEARBORN
HEIGHTS, CITY OF DEARBORN HEIGHTS
POLICE DEPARTMENT, CITY OF
DEARBORN, CITY OF DEARBORN
POLICE DEPARTMENT, And JOHN DOE
OFFICERS I-XXX,

Defendants.

CASE NO. 10-cv-12635

**PLAINTIFFS' RESPONSE AND BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION FOR
PARTIAL DISMISSAL**

(Honorable Patrick J. Duggan)

5
6 **HADOUSCO. | PLLC**

7 **Nemer N. Hadous (CA: 264431) (AZ: 027529)**
8 **Admitted to practice in the U.S. District Court,**
9 **Eastern District of Michigan**

10 16030 Michigan Avenue, Suite 200
11 Dearborn, Michigan 48126
12 P: (313) 846-6300

13 F: (313) 846-6358

14 E: nhadous@hadousco.com

15 **ATTORNEY FOR PLAINTIFF**

16
17
18 **PUCKETT & FARAJ, PC**

19 **Haytham Faraj**

20 6200 Schaefer Road, Suite 202
21 Dearborn, Michigan 48126

22 P: (760) 521-7934

23 **ATTORNEY FOR PLAINTIFF**

**CUMMINGS, McLOREY, DAVIS,
& ACHO, PLC**

Jeffrey Clark (P33074)

33900 Schoolcraft Road

Livonia, Michigan 48150

P: (734) 261-2400

E: jclark@cnda-law.com

ATTORNEY FOR DEFENDANTS

Michael Krause, City of Dearborn

Heights, and City of Dearborn Heights

Police Department.

Laurie M. Ellerbrake (P38329)

13615 Michigan Avenue

Dearborn, Michigan 48126

P: (313) 943-2035

ATTORNEY FOR DEFENDANTS

City of Dearborn, and City of

Dearborn Police Department

24
25
26 **PLAINTIFFS' RESPONSE AND BRIEF IN OPPOSITION TO DEFENDANTS'**
27 **MOTION FOR PARTIAL DISMISSAL**

TABLE OF CONTENTS

1

2 **INDEX OF AUTHORITIES** _____ **3, 4**

3 **I. INTRODUCTION** _____ **5**

4 **II. STANDARD OF REVIEW** _____ **5, 6**

5 **III. FACTUAL BACKGROUND** _____ **6-10**

6 **IV. ARGUMENT**

7 **A. The Defendants Carry on a Corrupt Commercial Enterprise Under Color of**

8 **Law**

9 **1. Civil Conspiracy under 42 U.S.C. § 1983** _____ **10-11**

10 **2. The Defendants’ Corrupt Commercial Enterprise** _____ **11-12**

11 **3. Mr. and Mrs. Saad were Harmed by the Defendants’ Corrupt Commercial**

12 **Enterprise** _____ **14-17**

13 **B. The Intracorporate Conspiracy Doctrine is Inapplicable**

14 **1. The Intracorporate Conspiracy Doctrine Has Not Been Extended to 42**

15 **U.S.C. § 1983 Claims** _____ **18**

16 **2. The Intracorporate Conspiracy Doctrine Does Not Apply To Employees**

17 **Who Act Outside the Scope of their Employment** _____ **18-19**

18 **3. The Defendants Are Acting Outside The Scope Of**

19 **Their Employment** _____ **19-20**

20 **C. The Defendants’ Informal Custom, Policy, and/or Practice Of Using Color of**

21 **Law to Generate Revenue Unlawfully in Furtherance of the Corrupt**

22 **Commercial Enterprise Violates 42 U.S.C. § 1983** _____ **20 -21**

23 **D. The Defendants’ Motion to Dismiss is Premature** _____ **21**

24 **E. Dismissal of the Dearborn Heights Police Department** _____ **21**

25 **VI. CONCLUSION** _____ **21**

26 **CERTIFICATE OF SERVICE** _____ **22**

27

28

29

30

31

INDEX OF AUTHORITIES

CASES

1		
2		
3	<u>Arlington Heights v. Metro. Hous. Dev. Corp.</u> , 429 U.S. 252, 261 (U.S. 1977) _____	14
4	<u>Auster Oil & Gas, Inc. v. Stream</u> , 764 F.2d 381, 386 (5th Cir. 1985) _____	6
5	<u>Bell Atl. Corp. v. Twombly</u> , 550 U.S. 544 (2007) _____	5, 6
6	<u>Buschi v. Kirven</u> , 775 F.2d 1240, 1252 (4th Cir.1985) _____	19
7	<u>Collyer v. Darling</u> , 98 F.3d 211 (6th Cir. 1996) _____	10
8	<u>Conley v. Gibson</u> , 355 U.S. 41, 45-46 (1957) _____	6
9	<u>Dussouy v. Gulf Coast Inv. Corp.</u> , 660 F.2d 594, 603 (5th Cir. La. 1981) _____	19
10	<u>Estate of Smithers ex rel. Norris v. City of Flint</u> , 602 F.3d 758, 765	
11	(C.A.6 (Mich.), 2010) _____	18
12	<u>Greenville Pub. Co. v. Daily Reflector, Inc.</u> , 496 F.2d 391, 399	
13	(4th Cir. N.C. 1974) _____	19
14	<u>Hodgin v. Jefferson</u> , 447 F. Supp 804, 807 (D.Md. 1978) _____	19
15	<u>Hooks v. Hooks</u> , 771 F.2d 935, 944 (6th Cir. 1985) _____	10, 11
16	<u>Johnson v. Hills & Dales Gen. Hosp.</u> , 40 F.3d 837, 841 (6th Cir. Mich. 1994) _____	18
17	<u>Johnston v. Baker</u> , 3 Cir. 1971, 445 F.2d 424	
18	<u>Kinkus v. Village of Yorkville</u> , 476 F. Supp.2d 829 (S.D. Ohio 2007) _____	18, 19
19	<u>Kottmyer v. Maas</u> , 436 F.3d 684, 688 (6th Cir. 2006) _____	6
20	<u>Linda R.S. v. Richard D.</u> , 410 U.S. 614, 617 (1973) _____	14
21	<u>Monell v. New York City Department of Social Services</u> ,	
22	436 U.S. 658, 691 (1978) _____	20, 21
23	<u>Moning v. Alfonso</u> , 400 Mich. 425, 437; 254 N.W.2d 759 (1977) _____	15
24	<u>Oatman v. Potter</u> , 92 Fed. Appx. 133, 137 (6th Cir. Mich. 2004) _____	21
25	<u>O'Shea v. Littleton</u> , 414 U.S. 488, 498 (1974) _____	14
26	<u>Pillette v. Detroit Police Department</u> , 661 F. Supp 1145, 1148	
27	(E.D. Mich. 1987), <u>aff'd</u> , 852 F.3d. 1288 (6th Cir. 1988) _____	11
28	<u>RMI Titanium Co. v. Westinghouse Elec. Corp.</u> , 78 F.3d 1125, 1134	
29	(6th Cir. 1996) _____	5
30	<u>Simon v. Eastern Ky. Welfare Rights Org.</u> , 426 U.S. 26, 41-42 (1976) _____	14
31	<u>Skinner v. Square D Co.</u> , 445 Mich. 153, 516 N.W.2d 475 (1994) _____	14

1 United States ex rel. Bledsoe v. Cmty. Health Sys., Inc., 501 F.3d 493, 502
2 (6th Cir. 2007) _____ **5, 6**
3 Weberg v. Franks, 229 F.3d 514, 528 (6th Cir. Mich. 2000) _____ **11**
4 Weiner v. Klais & Co., 108 F.3d 86, 88 (6th Cir. 1997) _____ **6, 14**
5 Williams v. Morgan Stanley & Co., 2009 U.S. Dist. LEXIS 23372
6 (E.D. Mich. Mar. 24, 2009) _____ **18**
7 United States v. SCRAP, 412 U.S. 669, 688 (1973) _____ **14**

8 **STATUTES**

9 42 U.S.C. § 1983 _____ **10, 16-20**
10 Michigan Public Act 85 of 2006 _____ **9, 12, 17, 20**

11 **FEDERAL RULES OF CIVIL PROCEDURE**

12 FRCP 12(b)(6) _____ **5, 6, 14, 21**
13 FRCP 56(f) _____ **21**

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1 **BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL**

2 **I. INTRODUCTION**

3 The City of Dearborn Heights employs a police department to "protect life and
4 property, preserve the peace, prevent crime, aggressively pursue violators of the law and enhance
5 the quality of life of the residents of Dearborn Heights." Since at least 2004, this mission has
6 become subordinate to a corrupt commercial enterprise to generate revenue for the City of
7 Dearborn Heights and to increase income and retirement benefits for Dearborn Heights police
8 officers by pillaging Dearborn Heights residents and commuters. In 2004, the City of Dearborn
9 Heights, estimated population of 51,972, issued approximately 25,984 tickets for civil
10 infractions. By 2008, that figure skyrocketed by approximately 90% to an alarming 49,330. By
11 comparison, the City of Dearborn, estimated population of 86,4777, issued only 20, 310 tickets
12 for civil infractions in 2008.

13 The corrupt commercial enterprise carried on by Dearborn Heights officials and
14 Dearborn Heights police officials and officers (collectively, the "Defendants") has led to a
15 pattern of repeated, severe violations of the Constitutional Rights of residents and commuters in
16 Dearborn Heights. The Saad case is but one instance of how aberrant law enforcement in the
17 City of Dearborn Heights has become since the Defendants commenced the corrupt commercial
18 enterprise that plagues the City of Dearborn Heights.

19 **II. STANDARD OF REVIEW**

20 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal
21 sufficiency of the complaint. RMI Titanium Co. v. Westinghouse Elec. Corp., 78 F.3d 1125,
22 1134 (6th Cir. 1996). Reviewing a motion to dismiss, "the [c]ourt must construe the complaint
23 in the light most favorable to the plaintiff, accept all factual allegations as true, and determine
24 whether the complaint contains 'enough facts to state a claim to relief that is plausible on its
25 face.'" United States ex rel. Bledsoe v. Cmty. Health Sys., Inc., 501 F.3d 493, 502 (6th Cir.
26 2007) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)). In other words, "[the]
27 complaint must contain either direct or inferential allegations with respect to all material
28 elements necessary to sustain a recovery under some viable legal theory." Weiner v. Klais &
29 Co., 108 F.3d 86, 88 (6th Cir. 1997).

30 "Under general pleading standards, the facts alleged in the complaint need not be
31 detailed, although 'a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief'

1 requires more than labels and conclusions, and a formulaic recitation of a cause of action's
2 elements will not do." Bledsoe, 501 F.3d at 502 (quoting Twombly, 127 S. Ct. at 1964-65).

3 Under Rule 12(b)(6) "a complaint should not be dismissed for failure to state a claim
4 unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim
5 which would entitle him to relief." Kottmyer v. Maas, 436 F.3d 684, 688 (6th Cir. 2006),
6 quoting Conley v. Gibson, 355 U.S. 41, 45-46, (1957). In considering whether to grant a
7 defendant's motion to dismiss pursuant to Rule 12(b)(6) a district court must accept as true all the
8 allegations contained in the complaint and construe the complaint liberally in favor of the
9 plaintiff. Kottmyer, 436 F.3d at 688. "Rule 12(b)(6) does not countenance ... dismissals based
10 on a judge's disbelief of a complaint's factual allegations." Twombly, 550 U.S. at 556.

11 The Fed. R. Civ. P 8 standard contains a "powerful presumption against rejecting
12 pleadings for failure to state a claim." Auster Oil & Gas, Inc. v. Stream, 764 F.2d 381, 386 (5th
13 Cir. 1985).

14 III. FACTUAL BACKGROUND¹

15 In 2004, the City of Dearborn Heights, estimated population of 51,972, issued
16 approximately 25,984 tickets for civil infractions. By 2008, that figure virtually doubled to an
17 alarming 49,330. By comparison, the City of Dearborn, estimated population of 86,477, issued
18 only 20,310 tickets for civil infractions in 2008.

19 This sharp rise in civil infractions issued by the Dearborn Heights Police Department
20 coincided with two significant developments: (1) the construction of a brand new state of the art
21 \$22 Million Dollar police station and courthouse in 2003, and (2) the enactment of the Deferred
22 Retirement Option Plan ("DROP").

23 A. Dearborn Heights Police Officers Violated Mr. and Mrs. Saad's Constitutional 24 Rights Under Color Of Law

25 Mr. and Mrs. Saad reside in the City of Dearborn Heights. They are an elderly married
26 couple with eighteen grandchildren living out the peaceful remainder of their lives. Mr. Saad
27 (86) suffers from Alzheimer's disease, Dementia, and heart arrhythmia. Mrs. Saad (78) is
28 diabetic and suffers from hypotension. Mrs. Saad is the primary caregiver for her husband. At
29 the time the Complaint was filed Joseph (61) had been living in his parent's home to help care

¹ References to "¶ ___" refer to the Plaintiffs' Complaint.

1 for the disabled Mr. Saad who requires 24-hour supervision.² On or about March 10, 2010, Mrs.
2 Saad was tending to her husband Joseph rushed through the front door in a panic. ¶ 20. Joseph,
3 who had been driving home from the medical clinic he operates less than a mile away, had pulled
4 into his parent’s driveway and was on the walkway to the front porch when a Dearborn Heights
5 police officer startled him by shouting at him. ¶ 18. When Joseph turned around and saw
6 Krause he told the officer he would retrieve his wallet and driver’s license from inside the home.
7 ¶ 19. Krause drew his gun on Joseph and threatened to shoot the unarmed elderly man if he went
8 through the front door. This caused Joseph, who like his mother suffers from Diabetes and
9 Hypotension, to rush through the front door in a panic, yelling, “The police are going to shoot
10 me!” ¶ 20.

11 Mrs. Saad left her husband and rushed toward the front door. ¶ 21. As she stepped onto
12 the front porch, Krause (nearly twice the woman’s size) **pointed his gun at Mrs. Saad’s chest**
13 **from point blank range** and demanded to be let into the home. ¶ 21. When Mrs. Saad refused
14 to let the armed Krause into her home, he threatened the elderly woman, telling her that he could
15 “lawfully” **shoot her**, that she would be “**sorry**,” and that he would flood her street with police
16 officers if she did not let him in. ¶¶ 23, 25.

17 Krause followed-up his threat and within minutes 10-15 police officers arrived at Mrs.
18 Saad’s home. ¶ 28. The officers cordoned the entire street block. ¶ 28. Krause and his fellow
19 officers escalated their threats to be let in, threatening to break down the door to the home and
20 terrorizing the terrified woman with a vicious police dog that was brought within a few feet of
21 her. ¶¶ 31, 33.

22 When Mrs. Saad would not consent to the officers’ entry, they headed to the back of the
23 home toward a rear bedroom door. ¶ 34. Mrs. Saad made a final, desperate plea for the officers
24 to stay out of her home, warning that their entry could cause the eighty-six year old Mr. Saad to

² Joseph has since moved out of his parent’s home for his family’s safety after an incident whereby Dearborn Heights police officers unlawfully entered Mr. and Mrs. Saad’s home for a second time. During that incident, Dearborn Heights officers beat and tasered Joseph in front of Mrs. Saad, handcuffed and arrested Mrs. Saad, and then dragged Mrs. Saad out of her home without her religious headscarf in front of shocked witnesses. Mrs. Saad was subsequently hospitalized for three nights.

1 suffer a heart attack and die. ¶ 34. One of the officers responded, “I don’t care” before the
2 officers stormed through the rear bedroom door. ¶ 34.

3 Joseph, who had taken shelter in his parent’s basement, walked up the stairs after the
4 officers threatened to unleash the vicious police dogs in the home. ¶¶ 40, 41. As Joseph was
5 pushed out the front door and toward the police cruiser, the Defendants taunted him and
6 threatened to “beat the fuck out of him” before physically kicking the sixty-one year old man
7 into the backseat of the police cruiser. ¶¶ 44-48.

8 Mrs. Saad witnessed all of what had happened to her son and pleaded with the officers to
9 stop hurting Joseph. ¶ 49. One of the officers responded by telling her to “shut up” and then
10 threatened to arrest her if she did not. ¶¶ 49-50.

11 **B. The Defendants Corrupt Commercial Enterprise**

12 The City of Dearborn Heights issues one of the highest numbers of civil infractions per
13 capita in the country. It is no coincidence that the number of civil infractions issued leapt from
14 25,984 in 2004 to 49,330 in 2008. This alarming increase is the product of the Defendants’
15 ongoing conspiracy to carry on a corrupt commercial enterprise by abusing police authority to
16 generate: (1) revenue for the City of Dearborn Heights to help pay for the \$22 Million Dollar
17 police station and courthouse, and (2) income for the individual police officers (which helps
18 boost their DROP calculable income).

19 Individual officers are incentivized to partake in the corrupt commercial enterprise
20 through DROP. DROP permits Dearborn Heights officers to work full-time for up to five years
21 while simultaneously collecting their retirement pension benefits. ¶ 59. Under DROP, an
22 officer’s pension benefits are calculated by using the average of an officer’s highest three years
23 of income including overtime. ¶ 59. It is this program which serves as the basis for the officers’
24 continued complicity in the corrupt commercial enterprise.

25 The corrupt enterprise features a liberal overtime policy that permits an officer to elect
26 overtime work provided the officer issues a minimum number of traffic tickets during his or her
27 overtime period (i.e., employees can work overtime provided they satisfy an arbitrary ticket
28 quota). ¶ 59. This enables the officers to supplement their current income as well as boost their
29 DROP calculable pension benefits. ¶ 59. Moreover, if an officer is scheduled to work four
30 overtime hours, he or she can work only three hours but be paid for the full four hours provided
31 they issue the minimum number of tickets in three hours. This practice of permitting an officer

1 to leave work early and **still be paid** as though he or she worked the full period provided they
2 meet a “ticket quota” appears to contradict the Dearborn Height Police Department’s stated
3 mission of protecting life and property, preserving the peace ... and enhancing the quality of life
4 of the residents of Dearborn Heights.

5 The ticket quotas are not limited to overtime periods. There is an express or implied
6 “ticket quota” whereby Dearborn Heights officers are required to issue between 12-15 traffic
7 tickets per week. ¶ 59. If the officers do not meet this quota their performance evaluations may
8 be adversely affected.³

9 It is a custom, practice, and/or policy for Dearborn Heights to convert the traffic citations
10 it issues to “impeding traffic” violations en masse. This is deliberate. The revenue generated
11 from an impeding traffic violation does not have to be shared with the State of Michigan.
12 Accordingly, Dearborn Heights engages in this practice to retain the entirety of its revenue
13 stream. This is accomplished by asking citizens who show up to contest their traffic citations at
14 an informal hearing to “raise their hands” if they would like to convert their traffic citation to an
15 impeding traffic violation (which most citizens do because an impeding traffic violation does not
16 result in “points” on their driving record). Citizens are never provided a meaningful opportunity
17 to challenge their traffic citation or to seek redress.

18 This corrupt commercial enterprise diverts taxpayer resources from legitimate police
19 activities related to the public health, safety, and welfare. Instead of featuring an increased
20 police presence in school zones or patrolling at-risk areas to deter criminal activity, the City
21 deploys its officers to multiple “speed traps” located throughout the city of Dearborn Heights
22 (where posted speed limits are likely unlawful pursuant to Public Act 85 of 2006, discussed
23 *infra*). This is to the **detriment** of the public, health, safety and welfare.

24 Moreover, the **officers** themselves jeopardize the public health, safety and welfare by
25 routinely pursuing motorists for minor traffic infractions at reckless speeds without activating
26 their police cruiser’s flashing lights and/or sirens. In fact, it is becoming increasingly common
27 for Dearborn Heights officers to “double-dip” on traffic stops by detaining motorists in the
28 middle of busy roads/streets to issue traffic citations (perilously taking up multiple lanes with
29 their police cruisers) and then citing subsequent motorists for the “failure to yield.”

³ Discovery is necessary to reveal the prevalence of “ticket quotas” in Dearborn Heights.

1 The Michigan State Legislature has recognized the need to curb municipal abuse of
2 police authority. In 2006, Public Act 85 of 2006 (“P.A. 85 of 2006”) was enacted to curb the
3 prevalence of “speed traps” municipalities use to entrap motorists and generate revenue. ¶ 58.
4 P.A. 85 of 2006 requires cities and townships to set their limits by the frequency of driveways
5 and cross streets, or by conducting an engineering and traffic study, and then posting a speed
6 limit based on the 85th percentile of free-flowing traffic — i.e., the speed at which 85 percent of
7 drivers are traveling during the traffic study. ¶ 58.

8 To date, only a few cities and townships have conducted the studies mandated by P.A. 85
9 of 2006.⁴ This has led to the introduction of House Bills 6164 and 6165 to amend the Michigan
10 Vehicular Code—a self-proclaimed, “bi-partisan effort to end speed traps across Michigan.” The
11 Bills, co-sponsored by State Representative Rick Jones, R-Grand Ledge, a former Eaton County
12 Sherriff, would compel cities and townships to comply with P.A. 85 of 2006 when setting speed
13 limits thereby preventing municipalities from posting artificially low speed limits to entrap
14 motorists. ¶ 58 - footnote 1.

15 IV. ARGUMENT

16 A. The Defendants Carry On a Corrupt Commercial Enterprise Under Color of Law

17 1. Civil Conspiracy Under 42 U.S.C. § 1983

18 A civil conspiracy is a cognizable action under 42 U.S.C. § 1983. Hooks v. Hooks, 771
19 F.2d 935, 944 (6th Cir. 1985); Collyer v. Darling, 98 F.3d 211 (6th Cir. 1996). “A civil
20 conspiracy is an agreement between two or more persons to injure another by unlawful action.”
21 An express agreement among the conspirators is not necessary to find the existence of a civil
22 conspiracy, nor must each conspirator know all the details of each plan. Id. All that must be
23 shown to sustain an action of civil conspiracy is that: (1) there was a single conspiratorial plan;
24 (2) the conspirators shared a common objective; and (3) an overt act was committed in
25 furtherance of this conspiracy’s objective that caused injury to the Plaintiff. Id.

26 Vague and conclusory allegations, unsupported by any facts are insufficient to state a
27 Section 1983 claim, Pillette v. Detroit Police Department, 661 F. Supp 1145, 1148 (E.D. Mich.
28 1987), aff’d, 852 F.3d. 1288 (6th Cir. 1988). The facts referred to must be ones that show a
29 conspiracy, or from which a conspiracy can be inferred. Id.

⁴ On information and belief, Dearborn Heights has not conducted the requisite studies; discovery is necessary to confirm this.

1 Rarely in a conspiracy case will there be direct evidence of an express agreement among
2 all the conspirators to conspire; circumstantial evidence may provide adequate proof of
3 conspiracy." Weberg v. Franks, 229 F.3d 514, 528 (6th Cir. Mich. 2000).

4 **2. The Defendants' Corrupt Commercial Enterprise**

5 The elements necessary to sustain an action for civil conspiracy as articulated by the
6 Sixth Circuit in Hooks, are supported by the following set of facts and circumstantial proof.

7 (a) **The Alarming Increase in the Quantity of Civil Infractions Issued by**
8 **Dearborn Heights Officers Between 2004 and 2008.**

9 This is direct evidence of overt acts committed in furtherance of the
10 conspiracy, i.e., sharply increased ticket writing, from which a reasonable
11 trier of fact could plausibly conclude the establishment of a single
12 conspiratorial plan and common objective between the Defendants to
13 generate: (1) municipal revenue for the Defendant City to help pay for the
14 \$22 Million Dollar police station and courthouse, and (2) additional
15 income for the Defendant officers. A reasonable trier of fact could further
16 conclude that this increase in traffic citations evidences: (1) the benefit
17 accruing to the City of Dearborn Heights (e.g., increased revenue); and (2)
18 the benefit accruing to the officers (e.g., the officers earn additional
19 current income and boost their DROP pension benefits) as a result of the
20 corrupt commercial enterprise

21 (b) **The Enactment Of DROP Amidst the Sharp Increase in Traffic**
22 **Citations Issued by Dearborn Heights Police.**

23 This is direct evidence of a single conspiratorial plan. A reasonable trier
24 of fact could plausibly conclude that DROP was enacted to
25 entice/incentivize the Defendant Officers to write an excessive number of
26 tickets. DROP is a lucrative pension benefit program that calculates
27 pension benefits on the basis of the average of an officer's highest three
28 years' pay including overtime. In Dearborn Heights, overtime is liberally
29 provided to police officers provided the officers write a minimum number

1 of tickets.⁵ DROP further evidences the common objective to generate
2 shared revenues.

3 (c) **The Existence of a Compensatory Scheme Which Enables Dearborn**
4 **Heights Officers to Work Overtime (Thereby Increasing Their DROP**
5 **Calculable Income) Provided the Officers Issue a Minimum Number**
6 **of Traffic Tickets During their Overtime Period:** See (b) above.

7 (d) **The Mass Conversion of Traffic Citations to “Impeding Traffic”**
8 **Violations, a Tactic which Permits the City of Dearborn Heights to**
9 **Retain the Entirety of the Revenue Generated by Each Converted**
10 **Ticket.** A reasonable trier of fact could plausibly conclude that the
11 Defendants have agreed, whether explicitly or implicitly, to convert
12 virtually all traffic citations to “impeding traffic” violations. This tactic
13 enables the City of Dearborn Heights to retain the revenue generated by
14 the ticket instead of sharing it with the State of Michigan, which they
15 would otherwise have to do if the ticket were not converted to an
16 impeding traffic violation. This further supports a finding that the
17 Defendants have antecedently agreed to issue traffic tickets en masse and
18 to subsequently convert those tickets to impeding traffic violations
19 regardless of the original “infraction” (i.e., the Defendants plan is to write
20 x number of tickets virtually all of which they agree will be converted to
21 impeding traffic violations). The foregoing evidences the establishment of
22 a single conspiratorial plan and is evidence of overt acts taken in
23 furtherance of the corrupt enterprise.

24 (e) **The City of Dearborn Heights’ Failure to Comply with Public Act 85**
25 **of 2006:** A reasonable trier of fact could plausibly conclude that Dearborn
26 Heights intentionally violates P.A. 85 2006 to entrap motorists at unlawful
27 “speed traps” in furtherance of the corrupt commercial enterprise.

28 (f) **The Deployment of a Police Officer to Issue an Excessive Number of**

⁵ Discovery is necessary to determine the precise extent of the availability of overtime and any formal or informal overtime policies regarding ticket quotas.

1 **Traffic Citations in a Quiet Residential Neighborhood:** A reasonable
2 trier of fact could plausibly conclude that Krause concealed his police
3 cruiser on private property without the property owner's consent to issue
4 an excessive number of traffic citations in furtherance of the corrupt
5 commercial enterprise. Upon information and belief, Krause issued
6 between 10-20 moving violations in the quiet residential neighborhood
7 over an exceptionally short period of time. This evidences an overt act.

8 (g) **Krause could not see the Stop Sign on Rosetta and Meadlawn.** Krause
9 concealed his police cruiser on the driveway of a home at the corner of
10 Melborn and Meadlawn. Joseph arrived at the stop sign posted at Rosetta
11 and Meadlawn. There are three large bushes which shroud the stop sign at
12 Rosetta and Meadlawn from where Krause positioned his police cruise. A
13 reasonable trier of fact could plausibly conclude that Krause issued this
14 and other civil infractions that day on the basis of false pretenses,⁶ and that
15 Krause was deployed to the residential neighborhood solely to entrap
16 motorists in furtherance of the corrupt commercial enterprise. This
17 evidences the establishment of a single conspiratorial plan and further
18 evidences that Krause was acting in furtherance of the corrupt commercial
19 enterprise the day he led the invasion into the Saad's home.

20 (h) **The Reckless, Unlawful, and Unreasonable Use of Force Against Mrs.**
21 **Saad and Her Son.** A reasonable trier of fact could plausibly conclude
22 the unlawful and unreasonable use of force against Mrs. Saad was
23 precipitated by the Krause's active involvement in the corrupt commercial
24 enterprise. A culture/policy of disregard for the Constitution would
25 inevitable lead to abuses and deprivations of federally protected rights not
26 unlike those experienced by Mrs. Saad. Further, Krause's statement to
27 Joseph while in the police cruiser regarding Joseph 'shutting his mouth
28 and taking his ticket like the 22 or so citizens before him' is an

⁶ The Plaintiffs have not had the opportunity to conduct discovery regarding the other commuters Defendant Krause issued citations to. Discovery is necessary to determine whether and to what extent commuters were issued civil infractions on the basis of false pretenses.

1 acknowledgment/admission of Krause's objective (to issue excessive
2 traffic citations) and retaliatory motive for the reckless, unlawful, and
3 unreasonable use of force against the Saads.

4 (i) **The Reckless, Unlawful, and Unreasonable Entry of Mr. and Mrs.**
5 **Saad's Home:** see (g) above.

6 Under Rule 12(b)(6), a district court must accept as true all the allegations contained in
7 the complaint. Kottmeyer, 436 F.3d at 688. The complaint must contain either direct or
8 inferential allegations with respect to all material elements necessary to sustain a recovery under
9 some viable legal theory. Weiner, 108 F.3d at 88. The foregoing allegations contained in (a)-(i)
10 above, all of which derive from the Plaintiffs' Complaint, make it plausible that a reasonable
11 trier of fact would conclude/infer that: (1) the Defendants are engaged in a single conspiratorial
12 plan to carry on an corrupt commercial enterprise; (2) the Defendants' common objective was to
13 generate revenue for the City and income for the individual actors/officers; and (3) overt actions
14 have been committed in furtherance of the corrupt commercial enterprise.

15 **3. Mr. and Mrs. Saad were Harmed by the Defendants' Corrupt Commercial**
16 **Enterprise**

17 The Defendants contend that the Plaintiff's lack "standing" to bring their conspiracy
18 claims. They are mistaken.

19 The Supreme Court has articulated the requirements necessary for "standing." The
20 plaintiff must show that he himself is injured by the challenged action of the defendant.
21 Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 261 (U.S. 1977). The injury may
22 be indirect, see United States v. SCRAP, 412 U.S. 669, 688 (1973), but the complaint must
23 indicate that the injury is indeed fairly traceable to the defendant's acts or omissions. Id. See
24 also, Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976); O'Shea v. Littleton,
25 414 U.S. 488, 498 (1974); Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973).

26 The "fairly traceable" requirement implicates the element of causation. In Skinner v.
27 Square D Co., 445 Mich. 153, 516 N.W.2d 475 (1994), the Supreme Court of Michigan
28 explained causation. Causation entails two separate elements, which are cause in fact and legal
29 or proximate cause. Id. at 162-163.

30 The cause in fact element generally requires showing that "but for" the defendant's
31 actions, the plaintiff's injury would not have occurred." Id. at 163, 516 N.W.2d 475.

32 Circumstantial evidence can establish causation if it facilitates reasonable inferences of

1 causation, not mere speculation or impermissible conjecture. Id. at 163-164, 516 N.W.2d 475.

2 Legal cause or "proximate cause" normally involves examining the foreseeability of
3 consequences, and whether a defendant should be held legally responsible for such
4 consequences. Id. at 163 (citing, Moning v. Alfonso, 400 Mich 425, 437; 254 N.W.2d 759
5 (1977)).

6 The Saad's live in a quiet residential neighborhood that does not warrant a standing
7 police presence. On the day the events described herein took place, no neighborhood disturbances
8 had been reported and no standing police presence was warranted in the quiet residential
9 neighborhood. Krause was nonetheless deployed to the Saad's neighborhood to issue an
10 excessive amount of traffic tickets in furtherance of the corrupt commercial enterprise.

11 Krause concealed his police cruiser on private property adjacent to Mr. and Mrs. Saad's
12 home (near the corner of Meadlawn and Melborn Streets). The property owner did not consent
13 to Krause's entry or use of the property. For at least one or more hours, Krause ticketed one
14 motorist after another under the pretext that he or she "failed to come to a complete stop" at the
15 stop sign posted on the corner of Meadlawn and Melborn Streets. Consequently, Krause even
16 ticketed Mr. and Mrs. Saad's other son Sam, who lives a few block away.

17 This pretext prompted Krause's initial pursuit of Joseph and culminated in the reckless,
18 unreasonable, and unlawful use force against Mrs. Saad and the unreasonable and unlawful entry
19 of her home. It was precisely the corrupt commercial enterprise that prompted the foregoing
20 Constitutional violations and which fostered the culture/policy of disregard for the Constitution
21 that made it reasonably foreseeable and probable that severe violations of the Constitutional
22 Rights of citizens like Mr. and Mrs. Saad would ensue.

23 For example:

- 24 - Krause posited that he could lawfully shoot Mrs. Saad while he held a gun to the
25 unarmed elderly woman;
- 26 - The Defendant officers threatened to "break down" Mrs. Saad's door;
- 27 - The Defendants terrorized Mrs. Saad with a vicious police dog;
- 28 - The Defendants displayed blatant disregard for Mr. Saad's health, safety, and
29 welfare by storming through the door to the bedroom where he lay with their guns
30 and police dogs after being informed of his fragile state;
- 31 - The Defendants threatened to arrest Mrs. Saad when she pleaded with them to

1 stop manhandling the already-incapacitated Joseph; and

2 - **As Joseph was being driven to the Dearborn Heights Police Station, Krause**
3 **remarked that Joseph should have just “shut his mouth” and “taken his**
4 **ticket” like the twenty-two people before him.**

5 The foregoing events were precipitated by Krause’s decision to pursue Joseph for
6 Joseph’s alleged failure to come to a complete stop in his automobile at the stop sign posted on
7 the corner of Rosetta and Meadlawn—**a stop sign Krause could not even see from where he**
8 **was parked.**

9 Krause was acting in furtherance of the corrupt commercial enterprise when he set out for
10 the Saad’s neighborhood to issue an excessive amount of traffic citations which he knew would
11 be converted to “impeding traffic” violations. Krause was acting in furtherance of the corrupt
12 commercial enterprise when he: (1) pursued Joseph to the front steps of his home; (2) pointed a
13 gun at Mrs. Saad to coerce her consent to his entry of the home; and (3) illegally entered Mrs.
14 Saad’s home with vicious police dogs without her consent and without a warrant. It is this
15 enterprise which set off the chain of events that led to the severe, palpable violations of the Mr.
16 and Mrs. Saad’s Constitutional Rights. ‘But for’ the Defendants’ corrupt commercial enterprise,
17 the Mr. and Mrs. Saad would not have suffered the events of March 10, 2010 herein described.

18 The corrupt enterprise described herein operates under color of law to generate revenue
19 unlawfully from the public. The reasonably foreseeable consequences of such enterprise would
20 be a continual and persistent deprivation of the Constitutional Rights of citizens not unlike those
21 experience by Mr. and Mrs. Saad when the Defendants used guns and police dogs to threaten
22 Mrs. Saad and then enter her home without her consent and without a warrant in violation of the
23 Fourth and Fourteenth Amendments to the United State Constitution. 42 U.S.C. § 1983 was
24 enacted to counter this very evil.

25 The Defendants cite no case law or facts to support their argument that no nexus between
26 the Plaintiffs’ injuries and the Defendants’ corrupt commercial enterprise exists. The Defendants
27 merely state, “Defendant’s ceasing to write these traffic tickets would not redress Plaintiffs’
28 claimed injury of being subjected to excessive force.” This argument misapplies the law of

1 remedies, as the very essence of a civil lawsuit is to seek redress, monetary or otherwise⁷.

2 In any event, summary disposition is inappropriate because the following questions of
3 fact are the province of a reasonable trier of fact:

- 4 (1) Are the Defendants engaged in a corrupt commercial enterprise?
- 5 (2) Are the Defendants acting outside the scope of their employment (as will be
6 discussed infra?)
- 7 (3) Did Krause issue one or more traffic tickets on false pretenses?
- 8 (4) Was Krause acting in furtherance of the corrupt commercial enterprise prior to
9 pursuing Joseph?
- 10 (5) Was Krause acting in furtherance of the corrupt commercial enterprise when he
11 threatened Mrs. Saad and then entered her home without her consent or a
12 warrant?
- 13 (6) Was the corrupt commercial enterprise the proximate cause of Mr. and Mrs.
14 Saad's injuries, including the multiple violations of their Constitutional Rights?
- 15 (7) Does Krause's remark to Joseph en route to the Dearborn Heights Police
16 Station establish that he was acting in furtherance of the commercial enterprise
17 both prior to and during his pursuit of Joseph?
- 18 (8) Does Krause's remark to Joseph en route to the Dearborn Heights Police
19 Station establish that the preceding events were retaliation for Joseph's failure
20 to "shut his mouth" and "take his ticket" like the twenty-two citizens before
21 him?
- 22 (9) Does Dearborn Heights intentionally violate P.A. 85 2006 to operate unlawful
23 "speed traps" thereby generating revenue and entrapping motorists in
24 furtherance of the corrupt commercial enterprise?
- 25
26

⁷ This is the virtual equivalent of arguing that a robbery victim does not have "standing" to pursue the gang members who robbed him/her for civil conspiracy to commit robbery because the "gang's cessation of gang activity would not redress the victim's injury of being robbed." This is faulty reasoning because the civil lawsuit would be considered remedial to the transgressions (i.e., the act of robbery) committed.

1 **B. The Intracorporate Conspiracy Doctrine is Inapplicable**

2 **1. The Intracorporate Conspiracy Doctrine Has Not Been Extended to 42**
3 **U.S.C. §1983 Claims**

4 The intracorporate conspiracy doctrine has its genesis in basic principles of agency.
5 Under principles of agency, a corporation acts only through the authorized acts of its agents (i.e.,
6 its corporate directors, officers, and other employees). The core of this doctrine is that a
7 corporate officer and the entity itself should not inherently be thought of as two separate persons
8 for the purpose of a conspiracy. Since a conspiracy requires at least two persons or distinct
9 entities for, *inter alia*, a “meeting of the minds,” a corporation acting through its agents cannot
10 conspire with itself.

11 Neither the Supreme Court nor the Sixth Circuit has directly addressed whether the
12 intracorporate conspiracy doctrine applies to Section 1983 claims against police officers and
13 municipalities.

14 “As plaintiffs failed to present sufficient evidence to survive a motion for
15 summary judgment on their claim of conspiracy, we need not address the issue of
16 whether the intracorporate conspiracy doctrine applies to protect police officers
17 and police departments.”

18 Estate of Smithers ex rel. Norris v. City of Flint, 602 F.3d 758, 765 (C.A.6 (Mich.), 2010).

19 Some courts have refused to apply the doctrine in the context of Section 1983 claims.
20 The intracorporate conspiracy doctrine arose in the context of antitrust suits. Kinkus v. Village
21 of Yorkville, 476 F.Supp.2d 829 (S.D. Ohio 2007). The doctrine has **only** been applied in
22 antitrust cases and civil rights conspiracy cases brought under 42 U.S.C. Section 1985, **not** 42
23 U.S.C. 1983. Id.

24 **2. The Intracorporate Conspiracy Doctrine Does Not Apply to Employees Who**
25 **Act Outside the Scope of their Employment**

26 Even if the intracorporate conspiracy doctrine could be invoked against Section 1983
27 claims, which it cannot, the doctrine would be inapplicable because the Defendants have
28 conspired for their own pecuniary gain.

29 The Sixth Circuit has expressly limited the intracorporate conspiracy doctrine by finding
30 it inapplicable to employees who act outside the scope of their employment. Williams v.
31 Morgan Stanley & Co., 2009 U.S. Dist. LEXIS 23372 (E.D. Mich. Mar. 24, 2009) (citing
32 Johnson v. Hills & Dales Gen. Hosp., 40 F.3d 837, 841 (6th Cir. Mich. 1994)). “The
33 intracorporate conspiracy doctrine, if applied to broadly, could immunize all private conspiracies

1 from redress where the actors coincidentally were employees of the same company.” Id.
2 Corporate actors might be beyond the scope of their employment where the aim of the
3 conspiracy exceeds the reach of legitimate corporate activity. Id.

4 A number of other courts have explicitly stated or recognized that the intracorporate
5 conspiracy doctrine does not apply to corporate employees acting outside the scope of their
6 employment or to corporate employees with a personal stake, independent of that of the
7 corporation, in achieving the object of the conspiracy. Buschi v. Kirven, 775 F.2d 1240, 1252
8 (4th Cir.1985). See also Hodgin v. Jefferson, 447 F.Supp 804, 807 (D.Md. 1978). An exception
9 may be justified when the officer has an independent personal stake in achieving the
10 corporation's illegal objective. Greenville Pub. Co. v. Daily Reflector, Inc., 496 F.2d 391, 399
11 (4th Cir. N.C. 1974). Courts have fashioned an exception to the rule that a corporation cannot
12 conspire with its employees: when the officers of a corporation act for their own personal
13 purposes, they become independent actors, who can conspire with the corporation. Dussouy v.
14 Gulf Coast Inv. Corp., 660 F.2d 594, 603 (5th Cir. La. 1981) (citing, Johnston v. Baker, 3 Cir.
15 1971, 445 F.2d 424; R. Eickhoff, Fletcher Cyclopedia of the Law of Private Corporations §§
16 4884, 5032.1 (1978)).

17 Even if the intracorporate conspiracy doctrine were extended to conspiracies alleged
18 under Section 1983, it would be for a **jury** to decide whether the officers acted within the scope
19 of their employment in citing Plaintiff for disorderly conduct Kinkus v. Village of Yorkville, 476
20 F.Supp 2d 829, *rev'd in part on other grounds*, Kinkus, 289 Fed. Appx. At 94 (6th Cir. Ohio
21 2008) (emphasis added).

22 **3. The Defendants are Acting Outside the Scope of their Employment**

23 Police officers are integral members of society, vital to a healthy democracy. We
24 empower them to enforce state and local laws and to protect life, liberty, and property rights.
25 When the police engage in corruption, their authority and legitimacy are undermined (whether or
26 not each partook in the corrupt activity), resulting inevitably in the devolution of public
27 confidence in law enforcement.

28 In the instant case, the Defendants carry on a corrupt commercial enterprise to generate
29 revenue for both the City of Dearborn Heights and the individual officers. This enterprise diverts
30 taxpayer resources away from legitimate police activities related to the public health, safety, and
31 welfare and further, is **counter** to the public health, safety, and welfare.

1 Dearborn Heights officers are routinely deployed to multiple “speed traps” throughout
2 the City where posted speed limits are probably unlawful under P.A. 85 of 2006. They entrap
3 unsuspecting motorists and essentially turn ordinary citizens into “law-breakers” (sort of like the
4 Prohibition did).

5 These same officers routinely jeopardize motorists when they pursue other motorists at
6 reckless speeds without deploying their police cruiser’s flashing lights and/or sirens. There have
7 been multiple instances of vehicular collisions between negligent and/or reckless Dearborn
8 Heights officers and law-abiding citizens whose only fault was circumstance.

9 The Plaintiffs acknowledge that the Court is unlikely to rule that the intracorporate
10 conspiracy doctrine does not apply to Section 1983 claims; there is simply insufficient authority
11 to do so. However, it is for a reasonable trier of fact to determine whether the Defendants have
12 acted and are acting beyond the scope of their employment.

13 **C. The Defendants’ Informal Custom, Policy and/or Practice of Using Color of Law to**
14 **Generate Unlawful Revenue in Furtherance of the Corrupt Commercial Enterprise**
15 **Violates 42 U.S.C. § 1983.**

16 Under Monell, a municipality may be held liable under Section 1983 for monetary,
17 declaratory, or injunctive relief, when it implements or executes an unconstitutional or policy,
18 ordinance, regulation, or decision officially adopted and promulgated by municipal officials.
19 Monell v. New York City Department of Social Services, 436 U.S. 658, 691 (1978). Such
20 liability further extends to constitutional violations committed pursuant to governmental
21 “custom” even if such a custom has not received formal approval through the body’s official
22 decisionmaking channels. Id. at 690-691.

23 As noted above, the Defendants carry on a corrupt commercial enterprise to generate
24 revenue by abusing their police authority. The facts, as aforementioned, demonstrate uniform
25 approval and/or acquiescence from City of Dearborn Heights officials.

26 This is evidenced by:

- 27 (1) The enactment of DROP, which was signed by Mayor Dan Paletko.
- 28 (2) The Defendants’ willful disregard for P.A. 85 of 2006.
- 29 (3) The Defendant officers’ formal and/or informal overtime policies.
- 30 (4) The Defendants formal and/or informal “ticket quotas.”

31 The Defendants contend that there is no causal link between the Defendants’ corrupt
32 commercial enterprise and the use of reckless, unlawful, and unreasonable force against the

1 Plaintiffs. As discussed *supra* IV. A. 3., a causal link between the Defendants' corrupt enterprise
2 and their infringement upon Mr. and Mrs. Saad's Constitutional Rights exists. To the extent the
3 Defendants contend the facts do not support the requisite causal link; a Rule 12(b)(6) motion is
4 the inappropriate forum to make factual determinations or to "weigh" the evidence as such
5 determinations are the province of a reasonable trier of fact. Accordingly, the Plaintiffs have
6 adequately pled their Monell claim regarding the Defendants' corrupt commercial enterprise.

7 **D. The Defendants' Motion to Dismiss is Premature⁸**

8 This is pled to preserve the Plaintiffs' right to seek additional discovery. It is generally
9 improper to grant summary judgment without affording the non-movant sufficient opportunity
10 for discovery. Oatman v. Potter, 92 Fed. Appx. 133, 137 (6th Cir. Mich. 2004).

11 Much of the evidence establishing the existence of the corrupt commercial enterprise
12 rests with the Defendants. The Plaintiffs served their first discovery requests to the Defendants
13 on August 4, 2010. To date, the Plaintiffs have not received a response (the requests have not
14 become due yet). To the extent any factual deficiencies exist regarding any of the Plaintiffs'
15 claims, the Plaintiffs ask this Court to permit the discovery reasonably necessary for Plaintiffs to
16 establish the extent and scope of the Defendants' corrupt commercial enterprise.

17 **E. Dismissal of the Dearborn Heights Police Department.**

18 The Plaintiffs do not object to dismissing the Defendant Dearborn Heights Police
19 Department, an entity of the Defendant City of Dearborn Heights, should the Court deem
20 inclusion redundant.

21 **V. CONCLUSION**

22 For the reasons stated above, the Plaintiffs respectfully request that the Court deny the
23 Defendants' Motion to Dismiss in its entirety save for the dismissal of the Defendant Dearborn
24 Heights Police Department should the Court deem inclusion redundant. The Plaintiffs have
25 adequately pled their causes of action and to the extent any deficiency exists, the Plaintiffs
26 hereby request the opportunity to amend the Complaint to cure the deficiency.

27
28

⁸ A Motion to Permit Discovery pursuant to Federal Rule of Civil Procedure 56(f) is being filed
concurrently with this Response.

1
2 **RESPECTFULLY SUBMITTED** this 19th Day of August, 2010.

3
4 **HADOUSCO. | PLLC**

5
6
7 **By: /s/ Nemer Hadous**
8 **Nemer N. Hadous**
9 16030 Michigan Avenue
10 Suite 200
11 Dearborn, Michigan 48126
12 P: (313) 846-6300
13 F: (313) 846-6358
14 E: nhadous@hadousco.com
15 **ATTORNEY FOR PLAINTIFFS**
16 *Zihra Saad and Mahmoud Saad*

17
18
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on August 19, 2010, I electronically filed the foregoing with the
21 Clerk of the Court using the ECF system which will send notice of such filing to all attorneys of
22 record in this matter. Since none of the attorneys of record are non-ECF participants, hard copies
23 of the foregoing have not been provided via personal delivery or by postal mail.

24
25
26 **HADOUSCO. | PLLC**

27
28
29 **By: /s/ Nemer Hadous**
30 **Nemer N. Hadous**
31 16030 Michigan Avenue
32 Suite 200
33 Dearborn, Michigan 48126
34 P: (313) 846-6300
35 F: (313) 846-6358
36 E: nhadous@hadousco.com
37 **ATTORNEY FOR PLAINTIFFS**
38 *Zihra Saad and Mahmoud Saad*