

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NUMBER: _____

In the application between:

FINES 4 U (PTY) LTD First Applicant

**BRETT HUDSON (PTY) LTD T/A
AUDI CENTRE JOHANNESBURG (PTY) LTD** Second Applicant

and

**SHERMAN M AMOS, DEPUTY REGISTRAR, ROAD
TRAFFIC INFRINGEMENT AGENCY** First Respondent

THE MINISTER OF TRANSPORT Second Respondent

**THE DIRECTOR-GENERAL, DEPARTMENT OF
TRANSPORT** Third Respondent

**THE ROAD TRAFFIC INFRINGEMENT AGENCY
BOARD** Fourth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the above named applicants intend applying to the above Honourable Court on _____ at **10h00** or as soon thereafter as counsel on behalf of the applicants can be heard, for an order in the following terms:

1. That the first, alternatively, fourth respondent's decision in terms whereof the first applicant's representations lodged in terms of section 18 of the

- Administrative Adjudication of Road Traffic Offences Act (Act 46 of 1998) were rejected, be set aside or be reviewed and set aside;
2. That the decision by the first and/or fourth respondents to impose additional penalties in terms of the Administrative Adjudication of Road Traffic Offences Act (Act 46 of 1998) subsequent to the rejection of the first applicant's representations, be reviewed and set aside;
 3. That the first and/or fourth respondent's decisions to decline the first applicant's representations in respect of those infringement notices listed in the schedules annexed hereto marked as annexure "D", be reviewed and set aside, and that the representations filed in respect thereof be upheld;
 4. That the first and fourth respondents be ordered to pay the costs of this application, alternatively, that those respondents who elect to oppose the relief applied for herein be ordered to pay the costs;
 3. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **CORNELIA JOHANNA VAN NIEKERK** and annexures thereto will be used in support hereof.

TAKE NOTICE FURTHER that the first and/or fourth respondents are hereby called upon, in terms of Uniform Rule of Court 53(1)(a), to show cause why the abovementioned decisions should not be reviewed and set aside.

TAKE NOTICE FURTHER that in terms of Uniform Rule of Court 53(1)(b), the first and/or fourth respondents are hereby called upon to dispatch, within fifteen (15) days of receipt of this notice of motion, to the Registrar, the record of all documents and all electronic records (including any correspondence, contracts, memoranda, advices, recommendations, evaluations and the like) that relate to the making of the decisions which are sought to be reviewed and set aside, together with such reasons as the respondents are by law required or may require to give or make, and to notify the applicant's attorneys that it has done so. Without derogating from the above, the applicants specifically request a record of any proceedings and findings by the first and/or fourth respondent in:

- (a) not upholding the representations lodged by the first applicant with the first and/or fourth respondent;
- (b) not disclosing any reason for the dismissal and/or rejection of the first applicant's aforesaid representations;
- (c) imposing penalty fees subsequent to the dismissal of the aforesaid representations;
- (d) declining to make any decision in respect of those representations lodged and identified in terms of annexure "D" hereto.

TAKE NOTICE FURTHER that within 10 days of receipt of the record from the Registrar, the applicants may, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of their notice of motion and supplement their founding affidavit in terms of Uniform Rule of Court 53(4).

TAKE NOTICE FURTHER that the applicants have appointed the offices of Griesel & Breytenbach Attorneys as set out below as the address at which they will accept service of all process and proceedings.

TAKE NOTICE FURTHER that if any of the respondents intend to oppose the relief sought in this notice of motion, such respondents are required:

- (a) within 15 days of this notice of motion or any amendment thereto as contemplated in Uniform Rule of Court 53(4) to deliver a notice to the applicants' attorneys that such respondents intend to oppose and in such notice to appoint an address within 15 kilometres of the office of the Registrar of this Honourable Court at which the respondents will accept notice and service of all process in these proceedings;
- (b) within 30 days of the expiry of the time referred to in Uniform Rule of Court 53(4), to deliver any affidavits as the respondents may desire in answer to the allegations made by the applicants.

KINDLY ENROLL THE MATTER FOR HEARING ACCORDINGLY.

DATED AT PRETORIA ON THIS 24th DAY OF APRIL 2014.

GRIESEL & BREYTENBACH
ATTORNEYS FOR APPLICANTS
761 PARK STREET
CLYDESDALE, PRETORIA
REF: MR GRIESEL/7245/HVZ
TEL: 012 – 343 2407
FAX: 012 – 344 2851

TO: REGISTRAR OF THE HIGH COURT
PRETORIA

AND TO: **FIRST RESPONDENT**
C/O WATERFALL EDGE B
HOWICK CLOSE
WATERFALL OFFICE PARK
BEKKER ROAD
MIDRAND
HALFWAY HOUSE

SERVICE BY SHERIFF

AND TO: **SECOND AND THIRD RESPONDENTS**
C/O DEPARTMENT OF TRANSPORT
159 STRUBEN STREET
PRETORIA

SERVICE BY SHERIFF

AND TO: **FOURTH RESPONDENT**
C/O WATERFALL EDGE B
HOWICK CLOSE
WATERFALL OFFICE PARK
BEKKER ROAD
MIDRAND
HALFWAY HOUSE

SERVICE PER SHERIFF

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AUDI CENTRE JOHANNESBURG (PTY) LTD** Second Applicant

and

**SHERMAN M AMOS, DEPUTY REGISTRAR, ROAD
TRAFFIC INFRINGEMENT AGENCY** First Respondent

THE MINISTER OF TRANSPORT Second Respondent

**THE DIRECTOR-GENERAL, DEPARTMENT OF
TRANSPORT** Third Respondent

**THE ROAD TRAFFIC INFRINGEMENT AGENCY
BOARD** Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

CORNELIA JOHANNA VAN NIEKERK

do hereby make oath and say that:

1.

- 1.1 I am a major female business woman and the Managing Director of the first applicant with business address at 1st Floor, Bracken City, Cnr. Rae Franklin & Hennie Alberts Streets, Brackenhurst.
- 1.2 The facts herein fall within my personal knowledge, unless stated expressly to the contrary, and are to the best of my knowledge both true and correct.
- 1.3 I am duly authorised to depose to this founding affidavit in my capacity as Managing Director on behalf of the first applicant.

2.

PARTIES

- 2.1 The first applicant is **FINES 4 U (PTY) LTD**, a company with limited liability duly registered as such in terms of the Statutes of the Republic of South Africa with principal place of business at 1st Floor, Bracken City, Cnr. Rae Franklin & Hennie Alberts Streets, Brackenhurst.
- 2.2 The first applicant acts herein as the duly authorised representative and proxy of the second applicant in terms of the Criminal Procedure Act and the National Road Traffic Act as will be set out hereinafter in greater detail.

2.3 The first applicant conducts business and renders services in respect of the management of traffic offence by representing members of the public, as well as corporate and state entities in making representations to the respondents and/or facilitating the payment of traffic fines and penalties.

3.

The second applicant is **BRETT HUDSON (PTY) LTD T/A AUDI CENTRE JOHANNESBURG**, a company with limited liability duly registered as such in terms of the Statutes of the Republic of South Africa with principal place of business at Nelson Mandela Bridge, 55 Bertha Street, Braamfontein. I enclose herewith as annexure “A” a confirmatory affidavit by Brett Hudson in support of this application.

4.

4.1 The first respondent is **SHERMAN M AMOS**, a major male whose full and further particulars are unknown to the first applicant who is cited herein as the Deputy Registrar, Road Traffic Infringement Agency with address Waterfall Edge B, Howick Close, Waterfall Office Park, Bekker Road, Midrand.

4.2 The first respondent acted herein within the course and scope of his employment with the Road Traffic Infringement Agency in purportedly considering and rejecting certain representations made to him by the first

applicant, alternatively, issuing certain decision in respect of the aforesaid representations and/or refusing to make any decision.

5.

The second respondent is **THE MINISTER OF TRANSPORT** who is cited herein as the political head of the Department of Transport under whose auspices the administration and functioning of the Road Traffic Infringement Agency falls and situated at c/o Department of Transport, 159 Struben Street, Pretoria.

6.

The third respondent is the **DIRECTOR-GENERAL OF THE DEPARTMENT OF TRANSPORT** being the Executive Manager and Director of the Department of Transport under whose auspices the administration and functioning of the Road Traffic Infringement Agency falls and situated at c/o Department of Transport, 159 Struben Street, Pretoria.

7.

7.1 The fourth respondent is the **ROAD TRAFFIC INFRINGEMENT AGENCY**, a statutory body created in accordance with the provisions of the Administrative Adjudication of Road Traffic Offences Act (Act 46 of 1998) with address Waterfall Edge B, Howick Close, Waterfall Office Park, Bekker Road, Midrand.

7.2 I will hereinafter refer for ease of reference to the Administrative

Adjudication of Road Traffic Offences Act as “*the Act*” and to the fourth respondent as “*the Agency*”.

8.

NATURE OF RELIEF APPLIED FOR

The first applicant applies herein for the review and setting aside of the purported decisions taken by the respondents and/or so-called Representation Officers, the identity of which I do not know, in respect of certain representations made by the first applicant and/or their refusal to take any decision in respect thereof together with further ancillary relief.

9.

STATUTORY BACKGROUND

9.1 I have been advised that it is not customary to incorporate and/or quote from the contents of Statutes in affidavits of this nature. I beg, however, the Court’s indulgence in this regard due to the novelty involved in respect of the subject matter hereof.

9.2 The objects of the Act as per section 2 thereof are, inter alia:

9.2.1 to encourage compliance with the national and provincial laws and municipal bylaws relating to road traffic and/or to promote road traffic safety;

9.2.2 to encourage the payment of penalties imposed for infringements

and to allow alleged minor infringers to make representations;

9.2.3 to establish a procedure for the effective and expeditious adjudication of infringements;

9.2.4 to alleviate the burden of the Courts in trying offenders;

9.2.5 to penalise drivers and operators who are guilty of infringements;

9.2.6 to reward law abiding behaviour by reducing demerit points where they have been incurred if infringements or offences are not committed over specified periods;

9.2.7 to establish an agency to support the law enforcement and judicial authorities to undertake the administrative adjudication process.

9.3 In terms of section 17 if any person is alleged to have committed an infringement of any traffic law or traffic ordinance or bylaw the so-called issuing authority will cause an infringement notice to be served on the person, which must:

9.3.1 specify the name and residential and postal address of the infringer;

9.3.2 state the prescribed particulars of the infringement;

9.3.3 specify the amount of the prescribed penalty payable in respect of that infringement, the issuing authority to which the penalty is

payable and the place where the penalty may be paid;

9.3.4 specify the prescribed discounts, which may be obtained if a penalty is paid no later than 32 days after the date of service of the infringement notice;

9.3.5 inform the infringer that the demerit points position may be ascertained from the National Contravention Register;

9.3.6 inform the infringer that, not later than 32 days after the date of service of the infringement notice, the infringer may:

9.3.6.1 pay the penalty as reduced by the discount contemplated;

9.3.6.2 pay the penalty as so reduced in the case of a major infringement;

9.3.6.3 make arrangements with the agency to pay the penalty in instalments in the prescribed manner;

9.3.6.4 elect in the prescribed manner to be tried in Court;

9.3.6.5 provide information in the prescribed manner to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement coupled with the name, acceptable identification, residential and postal

address of the alleged driver or person in control of the vehicle.

- 9.4 It is provided for in Regulation 3(1) of the “*ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES REGULATIONS, 2008*” (hereinafter referred to as “*the Regulations*” that the infringement notice:

“...shall be issued and served or caused to be served on the infringer –

(a) in person,

*(b) By registered mail, on a form similar to form AARTO 03 as shown in schedule 1, **within 40 days** of the commission **of the infringement.**”*

- 9.5 Regulation 3(3) further provides that the issuing authority must notify the agency that an infringer has failed to comply with an infringement notice within the period contemplated in section 17(1) by submitting an electronic data file on which the information known in respect of the infringer and the infringement appears in accordance with Regulation 23(1) **within such period, not exceeding 32 days**, as may be agreed upon between the issuing authority and the agency.
- 9.6 In terms of section 18 of the Act an infringer who has been served with an infringement notice alleging that he or she has committed a **minor**

infringement may make representations with respect to that notice to the agency.

9.7 Section 18(4) further prescribes that the Agency must inform the issuing authority concerned of representations indicating the existence of reasonable grounds why the infringer should not be held liable for a penalty have been received.

9.8 Similarly, the agency must after considering the representations notify the infringer forthwith if the representations are allowed in terms of section 18(6), alternatively, if they are rejected the agency must notify the infringer in accordance with section 18(7). The notification that the representations are rejected in terms of section 18(7) must inform the infringer of:

9.8.1 the reasons for the decision;

9.8.2 that the infringer may elect to be tried in Court, or if he does not elect so to be tried that the penalty, or the prescribed representation fee and the prescribed fee of the courtesy letter, if any, are payable to the agency within 32 days after date of service of the notification and that the failure to pay the penalty and fees or to make arrangements to pay the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order.

- 9.9 I interpose at this point to point out that an infringer may only make representations in terms of section 18(1) in respect of “*minor infringements*”. No definition or description has been formulated, promulgated or legislated to distinguish between minor infringements, major infringements or other offences. The Regulations merely provide for infringements and offences in terms of the third schedule of the Regulations.
- 9.10 The Regulations provide, however, in terms of Regulation 4(3) that if the infringer has not received an acknowledgment as contemplated in sub-regulation (2) from the agency within 21 days from the date on which the infringer submitted representations, the infringer must notify the agency on a form similar to Form AARTO 08.
- 9.11 The issuing authority is further obliged to reply to the representation received in terms of sub-regulation (4) read together with sub-regulation (5) within 7 days of receipt of such notification from the agency.
- 9.12 Regulation 5 under the heading “*NOTIFICATION OF RESULT OF REPRESENTATIONS*” provide that the agency must inform an infringer of the decision of the representation officer within 21 days from the date of receipt of his or her representation by providing the infringer with a properly completed form similar to Form AARTO 09.
- 9.13 With regard to so-called courtesy letters Regulation 6 provides that the said courtesy letter shall be sent by the agency to the infringer within a

period not exceeding 32 days after receipt of the notification by the issuing authority to the agency of the fact that the infringer failed to comply with the infringement notice.

9.14 Failing the aforesaid the fourth respondent is obliged to issue a courtesy letter in accordance with the provisions of section 19.

9.15 In this regard section 19(1) of the Act provides as follows:

“If an infringer has failed to comply with an infringement notice as contemplated in section 17(1)(f) and the agency has been notified of the failure in terms of section 17(2), the agency must issue a courtesy letter and serve it on the infringer.”

9.16 Section 19(2) further contains the requirements of the courtesy letter, which must be complied with in substance and format by the Agency.

9.17 In terms of section 20 an enforcement order can only be issued if the infringer fails to comply with the requirements of a notification or a courtesy letter or has failed to appear in Court.

9.18 Section 20(2) provides as follows:

“No enforcement order is issued, unless the registrar is satisfied that –

(a) a notification contemplated in section 18(7) or courtesy letter as the case may be, has been served on the infringer

in question.”

9.19 In the premises I respectfully submitted that the Agency’s compliance with the prescribed periods of notification is obligatory and not a discretionary matter. It is an absolute requirement for the issuing of any enforcement order and fundamental to the due administrative process envisaged in terms of the Act.

10.

FACTUAL BACKGROUND

10.1 An infringer is defined in terms of section 1 of the Act as being the person who has allegedly committed an infringement and may be a corporate body. A corporate body that is the registered owner of a motor vehicle must nominate a proxy upon whom the infringement notice will be served. A proxy may, however, not be prosecuted for the statutory transgressions of the owner, the corporate body, but acts merely in a representative capacity. This is in accordance with the provisions of Regulation 336 of the National Road Traffic Regulations promulgated under the National Road Traffic Act, Act 93 of 1996 and published under Government Notice R229 in GG20903 on 17 March 2003 and section 332 of the Criminal Procedure Act.

10.2 During or about September 2013 I acted in my capacity as proxy on behalf of the second applicant in accordance with the power of attorney

provided to me by Audi Centre Johannesburg as is evident from the proxy from the second applicant attached hereto as annexure “**B**”.

10.3 I did receive some infringement notices as proxy on behalf of the second applicant. In the exercise of my duties I made enquiries on behalf of the second applicant with the agency. In reply thereto the agency provided me with a schedule listing the second applicant’s infringements as at 2013/09/11. Due to the voluminous nature of this schedule I am not going to annex a copy thereof to these papers, but will ensure that same is available at the hearing of this application should the above Honourable Court require same. The contents of the schedule can however be summarised as follows:

10.3.1 639 infringement notices were issued against the second applicant.

10.3.2 The value of the infringement notice penalties amounted to R322,860.00.

10.3.3 The infringements spanned the period of 2008/12/08 to 2013/08/14.

10.4 I submitted representations in terms of section 18 of the Act to the agency in respect of 570 of the second applicant’s infringements.

10.5 I annex hereto copies of examples of firstly a representation of an infringement notice stage marked **annexure “C1”** and an example of a

representation at courtesy letter stage marked annexure “C2” which must be read in conjunction with annexure “D” and more specifically referring to the notice numbers as appear from annexure “D”.

10.6 The contents of the representations submitted on behalf of Audi Centre Johannesburg are for all practical purposes *mutatis mutandis* identical and relate to infringement notices issued to Audi Centre Johannesburg in terms of the Act.

10.7 The above Honourable Court will note from the example of the said representation that I acknowledged, on behalf of Audi Centre Johannesburg that an infringement notice was issued and that Audi Centre Johannesburg elected to make a representation to the Agency in terms of Part D of the aforesaid representation, the contents of which reads as follows:

*“Section 19(1) of the AARTO Act, states that ‘If an infringer has failed to comply with an infringement notice as contemplated in section 17(1)(f) and the agency has been notified of the failure in terms of section 17(2), **the agency must issue a courtesy letter and serve it on the infringer**’. The period contemplated in Section 17(1)(f) is currently 32 days after the **date of service of the infringement notice**”.*

10.8 Section 20(1)(a) of the AARTO Act, states that ‘If an infringer fails to comply with the requirements of a notification contemplated in section

18(7) or a courtesy letter contemplated in section 19(2)(b) or has failed to appear in court as contemplated in section 22(3), as the case may be, **the registrar must, subject to subsection (2) issue an enforcement order**, serve it on the infringer and update the national contraventions register accordingly’.

10.9 These provisions are not optional, or discretionary. The periods referred to are in no way ambiguous or open to interpretation.

10.10 Additionally, the eNaTIS system automatically disallows the discount offered if payment of the infringement notice is not made, after the expiry of an automatically calculated period after delivery of the infringement notice. Upon the expiry of the period a courtesy letter **must** be generated.

10.11 In addition to these facts, a report entitled “*AARTO Pilot Project Status Report*” dated 26 July 2013, attached hereto as annexure “**E**”, which was tabled before the Department of Transport categorically states that infringement notices identical in nature to the notices issued against the second applicant matter in question have “*stagnated*” and will eventually have to be cancelled.

10.12 The second applicant’s infringement notices were issued during the period 2008 to 2013 and since then, it has not progressed beyond the stages of infringement notices. I therefore respectfully submit that these infringement notices should be cancelled, since the prescribed processes

have not been adhered to and it cannot proceed any further without violating the provisions of the Act herein described.

11.

- 11.1 Subsequent to the aforesaid representations being duly submitted I became aware of the outcome in respect of certain of the representations. The results of the outcome of these representations are listed in the schedule annexed hereto and marked as annexure "D". I wish to reiterate that the contents of the representations are all *mutatis mutandis* identical except for their status, infringement dates, etc.
- 11.2 It appears, however, that the Agency inconsistently accepted certain of the representations (i.e. the representations were therefore successful), but in other instances declined same by rejecting the representations on exactly the same basis.
- 11.3 I must, however, point out that only a few so-called "AARTO 09" "*Result of Representation*" forms have been received and the schedule has been compiled by hand.
- 11.4 Out of the 570 representations using the identical wording in the motivation 155 (27.19%) were successful, 208 (26.49%) were unsuccessful and 207 (36.32%) have not yet been adjudicated. The "*unsuccessful*" representations have additionally had the R200.00 "*unsuccessful representation*" fee added to them, thereby incurring a

further R41,600.00 penalty amount for the account of Audi Centre Johannesburg.

- 11.5 Only a few AARTO 09 Result of Representation forms were received in respect of the 363 representations that have been adjudicated upon.
- 11.6 I enquired as to the reason why no AARTO 09 forms were received and was informed by personnel of the Agency who did not want to be identified that “...*we don't send them anymore*”.
- 11.7 It goes without saying that the aforesaid failure by the Agency to send the AARTO 09 Result of Representation forms contravenes not only the Act, but also the provisions of the Constitution and the Promotion of Administration of Justice Act. In this regard the above Honourable Court will be mindful of the provisions of section 5 of PAJA which gives effect to section 33(2) of the Constitution.
- 11.8 The inconsistency in the result of the adjudication process needs to be questioned due to the fact that it is unfathomable that two separate and direct contradictory decisions can result from identical arguments as set out in the representations. With regards to the successful representations Audi Centre Johannesburg and I of course accept same.
- 11.9 I requested reasons from the Agency to explain the inconsistency and its failure to reach a decision in respect of the balance of the representations.

11.10 In this regard I approached the Justice Project South Africa (NPC) who directed a written request to the first and fourth respondents on or about 24 October 2013, a copy of which is annexed hereto and marked as annexure “F”, the contents of which speaks for itself and are incorporated herein as if specifically repeated under oath.

12

AGENCY’S REPLY

12.1 I received subsequent to the aforesaid request a letter from the fourth respondent dated 29 October 2013, a copy of which is annexed hereto and marked as annexure “G”.

12.2 In this letter the fourth respondent notified me as follows:

“ ...

...In essence representations submitted by you do not address legal or factual disputes relating to the infringement per se but purely an attempted interpretation of legal provisions as contain in the AARTO Act. To this extend [sic] you have also provided your own interpretation of section 17(2) by submitting ‘It is therefore not reasonable to expect that the issuing authority would need to ‘notify the agency’ in order for a courtesy letter to be issued, given the fact that the agency, and the eNaTIS system would in fact be in a better position to know whether an

infringement notice has been paid or not.

...Consequently without any such notification from the issuing authority as envisaged in section 17(2) the Agency is under no obligation to send, as stated by you, a courtesy letter to the infringer.

The purpose of a courtesy letter is precisely what the name indicates namely a courtesy reminder to an infringer that he or she did not exercise an option as provided for ... The non-service of an infringement notice is therefore not in dispute. It must therefore be concluded that the infringer intentionally failed to exercise any of the options envisaged in section 17(1)(f) alluded to above. This, notwithstanding, that the infringement notice was indeed served in the prescribed manner and time, but it was the infringer who intentionally chose to delay this option on average for a period of six months after date of infringement with the sole intention of submitting a representation not disputing the merits of the infringement but rather process a claim that were not followed by the agency namely the issue of courtesy letters and enforcement orders in an attempt to circumvent the penalties imposed...

The failure to exercise an option was therefore designed by you as proxy to the advantage or benefit of your principal albeit

contrary [sic] section 17(1)(f). As a proxy and the deeming provision as director in terms of the National Road Traffic Regulations 2000 it is expected of you to act in good faith and in the best interests of your principal as part of your fiduciary duty. By not performing as is expected and required by law when served with an infringement notice...may be construed as a breach of your fiduciary duty and in contravention of section 332 of the Criminal Procedures Act, Act 51 of 1977.

...

Consequently your continued threats of court action against the agency in the media and to my staff would be more than welcomed in order to test the circumstances alluded to above. Further and in terms of the provisions of NRTA you are deemed a director of the company you represent, as envisaged in subsection (10) of section 332 of Act 51 of 1977. As such you have a fiduciary duty towards the said company in terms of both common and statutory law failing which you may be held criminally liable in terms of the provisions of subsection 5 of section 332 of the Criminal Procedures Act, 1977.

...

In conclusion, please note that I have instructed all representation officers to mark all representations submitted by

you under the same or similar circumstances as unsuccessful with immediate effect. I am also considering the reversal of all representations made successful under the above circumstances to correct the inconsistencies, as discussions of representation officers are not functus officio. It would appear that you indeed were informed of the outcome hence your complaint of inconsistencies in the adjudication results albeit not on the prescribed form. The fact that AARTO 09 forms are not being despatched may be ascribed to the same financial difficulty the agency finds itself as with courtesy letters and enforcement orders. This is no secret and has been made public. You will appreciate that the non-payment of infringements merely aggravates the situation. You may enquire further on this matter with the COO should you require further information on the financial and operations of the agency. Your attention is also drawn to the provision of section 31(2) as it relates to the laws of prescription.”

13

On 5 November 2013 the Justice Project South Africa (NPC) replied on my behalf to the aforesaid letter, a copy of which is annexed hereto and marked as annexure “H”, the contents of which are incorporated under oath herein.

14

On 12 November 2013 my erstwhile attorneys, Burger Attorneys, also directed a letter to the Registrar of the Agency, a copy of which is annexed hereto and marked as annexure “I”. The copy at my disposal of annexure “I” does not contain a time period within which the fourth respondent needed to respond. However, the fourth respondent did respond to the letter from Burger Attorney dated 28 November 2013, a copy of which I attach hereto as annexure “J”.

15

SERVICE OF INFRINGEMENT NOTICES AND OTHER DOCUMENTS

- 15.1 I testified herein aforesaid that the second applicant and I only received a few of the infringement notices, but that I made inquiries with the agency who provided me in turn with a schedule listing the alleged infringements.
- 15.2 If a member of the public is not served in the prescribed manner with an infringement notice, or a courtesy letter, it will be difficult for persons to become aware of the existence thereof.
- 15.3 It is a fundamental principle of our Constitutional dispensation that all persons are presumed innocent until proven guilty and that no penalty or fine or other sentence will be imposed arbitrarily without due process in a court of law.
- 15.4 Members of the public can obtain knowledge in two ways of

infringements issued in their names, being:

15.4.1 the internet via the agency's webpage; or

15.4.2 service of infringement notices in the prescribed manner.

15.5 It is therefore possible for persons who have access to the Internet to access the agency's webpage to enquire if any infringements are listed against his or her name.

15.6 As from 1 April 2014 up until date of the signing hereof the functionality to check for infringements on the agency's website had not been operative and could one not obtain any information from the aforesaid webpage.

15.7 The only alternative available is for persons to access a webpage operated by a private entity known as *paycity.co.za*. This website provides information in respect of infringements issued by the Johannesburg Metro Police, but not those issued by the Tshwane Metro Police, the National Traffic Police or the Gauteng Department of Community Safety.

15.8 It is therefore of paramount importance that the issuing authorities and the agency comply with their statutory and regulatory obligations with regard to the timeous issue of infringement notices and the service thereof in the prescribed manner upon alleged infringers.

15.9 In this regard section 30(2) of the Act provides that a document which is sent by registered mail in terms of section 30(1) is regarded to have been served on the infringer on the 10th day after the date which is stamped upon the receipt issued by the Post Office which accepted the document for registration, unless evidence to the contrary is adduced.

15.10 The difficulty with the aforesaid is that section 30(2) does not cater for the reality that it takes the Post Office much longer to deliver articles per registered post than the permitted 10 days. One only needs to be mindful of the various instances of both, formal and informal strikes and other labour protests within the Post Office to understand that the deeming provision contained in section 30(2) is prejudicial to the rights of alleged infringers since they are deemed to have received the notices although this does not actually happen.

15.11 In this regard one should further have regard to the provisions contained in Regulation 3(1)(b) which reads as follows:

“...An infringement notice...shall be issued and caused to be served to the infringer...within 40 days of commission of the infringement.”

15.12 It is a trite principle that traffic offences of this nature must be prosecuted and adjudicated upon speedily to ensure the effective enforcement of traffic laws. Given the nature of these traffic infringements a person must be made aware of the alleged infringement as soon as possible, but not

later than 40 days after the alleged infringement. It speaks for itself that delay in the notification will prejudice a person. We are all human with fallible memories and recollection of what occurred when and where. One simply needs to ask yourself whether or not one can remember where, in what fashion and at what speed one drove at any particular time in the past to understand the importance of due compliance with the prescribed time periods.

15.13 This principle was acknowledged by the Legislature in providing for specific period within which the notices must be dispatched and delivered. Alleged infringers' constitutional rights to a fair trial are therefore protected by these provisions which serve as a safeguard.

15.14 As set out aforesaid the time period over which the infringements against the second applicant span, goes as far back as 2008. None of these notices were served in the prescribed manner on the second applicant.

15.15 I further wish to inform the above Honourable Court that I have knowledge of the fact that there is no uniformity in the manner in which the South African postal service deals with registered post. One should differentiate between so-called "*registered post*" opposed to "*secure mail*" or "*hybrid mail*". Secure mail or hybrid mail is similar to registered mail, but based upon an electronic tracing system. No date stamp is affixed to the receipt. What is, however, of great importance is the fact that infringement notices are sometimes sent by the postal services to a

Postal Office which is not necessarily the Post Office closest to the residence or place of employment of the alleged infringer. For example, an infringement notice may be sent to a Postal Office which appears to be close to the residential address of the alleged infringer although same is in actual fact located in certain instances more than 10 or 12 kilometres from where the alleged infringer lives or works.

- 15.16 The respondents assume that an alleged infringer received notice of the infringement notice in accordance with the provisions of the Act and the Regulations after the expiry of about 50 days. There is no factual basis for this presumed period with regard to when the notice was actually delivered. The respondents operate on the assumption that 50 days is a sufficient period.
- 15.17 After the lapse of about 50 days from the date of the alleged infringement the agency assumes without any evidence that service was effected, that the alleged infringer failed to either:
- 15.17.1 make a representation; or,
 - 15.17.2 make arrangement for payment or,
 - 15.17.3 elect to go to Court; or,
 - 15.17.4 that the infringer has paid.
- 15.18 This situation cannot be justified given the extent of the penalties and

sanctions imposed by the Act.

16

REPRESENTATIONS

16.1 As alluded to aforesaid in terms of section 18(1) representations can only be made in respect of minor infringements. Minor infringements are not defined, prescribed or regulated in terms of the Act and/or the Regulations. For all practical purposes what occurs in practice is that the Johannesburg and Tshwane Metro Police when traffic offences occur will either:

16.1.1 issue an infringement notice in terms of the Act;

16.1.2 Issue an AARTO 33 notification of intention to issue and serve summons in terms of Section 54 of the Criminal Procedure Act which is not currently catered for in terms of the promulgated Act or its regulations; or

16.1.3 arrest an accused and bring him before Court.

16.2 Given the existing lacuna in the legislation, it means that all offences dealt with in terms of the Act are either minor offences, regardless of the fact that it could be a serious offence such as, for example, driving a motor vehicle through a forbidding red light.

16.3 This further means that parking offences are equated to traffic offences

regardless of the fact that it is undeniably so that traffic offences involving, for example, high speed should be viewed as serious of major offences due to the nature of the offence as well as the prejudice that could be caused to other road users. I am mindful herein of the fact that our authorities attribute the high collision and death statistics on our roads mainly to exceeding speed limits.

16.4 If the converse is true that the infringement notices currently issued by infringement authorities and enforced by the agency are all major infringements, it means consequently that no representation can be made in respect of any infringement notice.

16.5 The aforesaid would render the whole Act unconstitutional. It would mean that a person is deemed to be guilty of committing a major infringement with the resulting incurrance of a penalty without even being afforded the opportunity of making representations, obtaining more information or defending himself against the allegations, except being able to **elect to be tried in court.**

16.6 For this reason alone the representations made by me on behalf of the second applicant should all therefore have succeeded.

REPRESENTATION OFFICERS

17.1 In terms of section 18(4) and (5) of the Act representation officers must

duly consider the representations and reply thereof.

17.2 The term representation officer is defined as a person contracted by the agency in terms of section 5 or appointed by the Registrar in terms of section 10 to consider representations submitted by any person who, after having committed a minor infringement, elects to make a representation.

17.3 A determination of qualifications and experience of representation officers have been made in terms of section 10(2)(a) of the Act as published in General Notice 258 in the Government Gazette 33038 on 19 March 2010. A representation officer therefore needs, inter alia, to:

17.3.1 be the holder of at least a three year qualification in law from a recognised tertiary institution; or

17.3.2 have a three year qualification in Traffic or Police Management or an equivalent qualification; or

17.3.3 have practiced as an attorney or advocate, traffic officer, magistrate, prosecutor or police officer for an uninterrupted period of at least three years; and

17.3.4 not be employed as a magistrate, prosecutor, police officer or by an issuing authority; and

17.3.5 be in possession of at least a Code B valid driving licence

free of endorsements.

17.4 It is common cause that the agency and the respondents at no stage provided any information to the second applicant and me subsequent to our representations having been duly delivered with regard to:

17.4.1 the identity of the representation officer(s);

17.4.2 particulars of the representation officer who considered the representations;

17.4.3 the outcome of those representations which the agency bluntly refused to consider;

17.4.4 to provide reasons for the outcome of the representations.

17.5 In this regard, it should be noted that the Regulations and the forms prescribed in terms thereof, and more particularly Form AARTO 09, provides that the outcome of the representation be noted on the aforesaid form using a computer generated field of insufficient characters to provide a proper and comprehensive reason for the rejection.

17.6 The prescribed form in itself is therefore wholly insufficient and inappropriate in that it will not be possible to provide comprehensive reasons for the decision on the said prescribed form.

17.7 For this reason alone the above Honourable Court should review and set aside all of the representations that were rejected.

INVOLVEMENT AND BIAS OF DEPUTY REGISTRAR

18.1 As is evident from my evidence aforesaid the Deputy Registrar, Mr Amos, who is the second respondent herein, indicated in his letter of 29 October 2013 as follows:

“In conclusion, please note that I have instructed all representation officers to mark all representations submitted by you under the same or similar circumstances as unsuccessful with immediate effect.”

18.2 The representation officers are supposed to exercise their duties objectively, free of influence and most certainly not subject to the instructions of Mr Amos.

18.3 It is, however, evident that the representation officers are currently not acting independently, free of influence and in an unbiased manner.

18.4 I have no reason to believe that the representation officers will in any event be in a position to exercise their duties fairly and objectively in the future given what has now become a long-standing impasse between specifically Mr Amos and myself. I must point out in this regard that I previously successfully instituted an application herein against the Johannesburg Metro Police Department as well as some of the respondents under case number 42646/2012 in the then Gauteng Local

Division, Johannesburg.

- 18.5 Without reason or justification Mr Amos threatened in the aforesaid letter to lay criminal charges against me.
- 18.6 The respondents further bluntly refuse to disclose the identity of the representation officers who dealt with the representations made herein on behalf of the second applicant by me.
- 18.7 The reason for this is, and the respondents are invited to prove the contrary, that the respondents operate an electronic system whereby prescribed outcomes are recorded in the system. This means that the representation officer can only exercise his discretion by utilising one of the prescribed outcomes dictated to him by the agency's computer system.
- 18.8 This also serves to explain why Mr Amos can make the statement that all of the representations that I may submit under similar circumstances shall be (automatically) rejected.
- 18.9 The representation officers do not consider the representations submitted as is required of them, but merely decide upon the outcome thereof with the push of a button on a keyboard or a mouse click.
- 18.10 The utilisation of so-called "*preformatted pull downs*" do not comply with what is required of representation officers. They do not apply their minds and cannot therefore provide reasons for their decisions.

19

The applicants therefore invite the respondents to identify the particular representation officers who were involved in rejecting the representations made by me on behalf of the second applicant. The respondents are called upon to provide the particulars of each such representation officer as well as the reason(s) for each of the officers' decision in rejecting each of the representations made.

20

PROBLEMS EXPERIENCED IN RESPECT OF PILOT PROJECTS IN TSHWANE AND JOHANNESBURG

- 20.1 It is well known that numerous problems have and are still being experienced by the law enforcement authorities and the respondents with regard to the pilot projects currently ongoing in Johannesburg and Tshwane.
- 20.2 It was originally indicated that the pilot project would only be operational for six months from 1 November 2008 in Tshwane alone before the next Metropolitan area being Johannesburg came on board also as a pilot site. Despite the fact that many of the hereinafter-mentioned problems have been enduring for many months, if not years, they remain mainly unresolved.
- 20.3 There exists on the eNaTIS system not a function in terms whereof all

payments made to infringing authorities and the agency can be recorded and reconciled. Payments made via banks and bank transfers are not captured on the eNaTIS directly. As a result of the aforesaid, inter alia, the payments collected by the different authorities and the agency cannot be reconciled. This is in contravention of the Public Finance Management Act, the Municipal Finance Management Act as well as General Accepted Municipal Accounting Practices (GAMAP).

It appears from annexure “E”, the AARTO Pilot Project Status Report, that m

20.4 more than 60% of all infringement notices are apparently returned by the postal services as being not delivered or collected. The South African Postal Services’ capacity to handle the volumes of mail generated in terms of the Act by the infringement authority and agency is to be doubted. In Gauteng specifically this situation will be further worsened by the introduction of e-tolls and the collection thereof.

20.5 Members of the public are severely prejudiced due to the fact that they will automatically lose the 50% discount provided for in terms of the Act in light thereof that the respondents assume that the notice was delivered within 50 days. When notices are not delivered at all or delivered late, it affects the alleged infringers’ rights to pay the penalty at the discounted rate within 32 days of **service** and misleads the public with regard to their right to insist upon such discount.

- 20.6 Due to the aforesaid, inter alia, as well as budgetary constraints the Johannesburg Metro Police Department has, for example, incurred “*wasteful*” expenditure of approximately R60 million up to the end of June 2013 by mailing in approximately 2.4 million cases of stale infringement notices outside the prescribed period.
- 20.7 Due to the fact that the agency is not complying with the administrative prescription of sending out courtesy letters enforcement orders cannot be legally issued and/or are null and void.

21

Based upon the aforesaid the applicants respectfully submit that the AARTO pilot projects are currently in total disarray. The AARTO Act cannot be effectively administered and members of the public cannot exercise or protect their Constitutional rights in terms thereof. These problems can only be addressed through legislative review and the effective management of specifically the agency.

22

GROUNDINGS OF REVIEW

In the premises I respectfully submit that the failure and/or refusal of the first and/or fourth respondents in respect of the representations stand to be reviewed and set aside upon the following grounds of review, being:

- 22.1 That the administrator who took the decision to reject or not to take any decision in respect of the rejected representations was biased;
- 22.2 That a mandatory and material procedure or condition prescribed by an empowering provision was not complied with in that no courtesy notices were despatched and/or delivered as provided for in terms of section 19(2);
- 22.3 That the exercise of the first and fourth respondents' decision was unfair, and/or was materially influenced by an error of law;
- 22.4 That the decision and/or refusal to take a decision was taken for a reason not authorised by the Act, for ulterior purposes or motives and/or as a result of irrelevant considerations or without taking into account the relevant consideration;
- 22.5 That the first and fourth respondents have clearly illustrated bad faith, by arbitrarily or capriciously, in their actions rejecting or declining the representations and/or failing and/or refusing to take any decision in respect thereof.
- 22.6 The decision to reject the representations contravenes the Act empowering the fourth respondent to adjudicate thereon and is not rationally connected to the purpose of the Act or the reasons given for it by the first and/or fourth respondents.
- 22.7 The first and/or fourth respondents further failed to take any decision in

respect of the outstanding representations submitted.

22.8 That the first respondent is granted no powers by the Act to instruct representations officers with respect to what judicial decisions they must reach and the first respondent has therefore acted unlawfully since his actions were ultra vires.

22.9 It is furthermore respectfully submitted that the first and/or fourth respondents and/or the officials who act on their behalf have a duty to take a decision in accordance with the provisions of the Act expeditiously, but that they fail to do so, consequently causing unreasonable delay in taking the decision.

23

In the premises I respectfully submit that sufficient grounds exist for the review and setting aside of the first and fourth respondents' administrative decision as envisaged in terms of section 6 of the Promotion of Administrative Justice Act, Act 3 of 2000.

24

PREJUDICE AND BIAS

24.1 As set out herein aforesaid Audi Centre Johannesburg has been gravely prejudiced as a result of the irregular imposition of further penalties as a result of the purported refusal of the representations submitted.

24.2 The bias and clear antagonistic attitude of specifically the first respondent makes it clear that the first and fourth respondent will not be able to adjudicate fairly, objectively and without bias on the representations submitted.

24.3 In the premises I respectfully pray that the above Honourable Court review and set aside their decision in either refusing representations and/or failing to take any decision by upholding the representations on the same basis as those representations which were accepted and/or that were successful.

25

In the premises I respectfully pray that an order be granted in terms of the notice of motion to which this affidavit will be annexed.

DEPONENT

I hereby certify that the deponent acknowledged that he/she is familiar with the contents of this affidavit which was signed and commissioned before me at PRETORIA on this _____ day of APRIL 2014, that he/she confirms the contents thereof and that he understands same and that the conditions and regulations as set out in Government Notice R1258 of 12 July 1972, as amended, was adhered to.

COMMISSIONER OF OATHS
Capacity:

Area:
Address: