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10 Real Party in Interest City of Daly City

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12 SUPERIOR COURT OF CALIFORNIA – COUNTY OF SAN MATEO

13 The People of the State of California

Case No. AD-□20

14 Plaintiff,

City of Daly City's Reply Brief

15

16 v.
N [] Lopez

17 Defendant.

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19 Real Party in Interest, City of Daly City

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21 I. STATEMENT OF FACTS

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23 Defendant N [] Lopez is charged with a violation of California Vehicle
24 Code section 21453(a), an infraction issued by the City of Daly City (the "City") through the use
25 of a red light camera automated enforcement system. Defendant is accused of failure to stop at a
26 red light on February 19, 2009 at an intersection in Daly City, California. Defendant requested a
27 court trial which took place on July 2, 2009. The trial court found Appellant guilty of a traffic
28 infraction and assessed a fine in the amount of \$436.00. Appellant filed an appeal of the trial

1 court's ruling on October 22, 2009.¹ Appellant argues that his citation should be dismissed
2 because of the compensation provisions present in the City's contract with Redflex Traffic
3 Systems ("Redflex"), the contractor which assists the city with the red light enforcement system.
4 On November 13, 2009, the Court held a hearing on the matter and Appellate Department reversed
5 the Trial Court's ruling on December 3, 2009. The City filed a petition for rehearing on the
6 matter, and on January 14, 2010, the Court issued a Ruling allowing the City to file its Respondent
7 Brief with the Court.

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9 The City respectfully submits this brief in support of its contract and enforcement
10 of the infraction.

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12 **I. ARGUMENT**

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14 The City's contract with Redflex should be enforced because the cost neutral
15 agreement between Redflex and the City does not violate California Vehicle Code Section
16 21455.5(g). Even were the Court to determine that the cost neutrality provision failed that statute,
17 the contract's severability clause requires enforcement of the rest of the contract, and therefore
18 enforcement of the infraction against Defendant.

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20 **A. The City's Cost Neutral Service Agreement Complies With California Vehicle Code**
21 **Section 21455.5(g)(1)**

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23 California Vehicle Code § 21455.5(g)(1) states in pertinent part:

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27 ¹ Appellant mailed a non-conformed, unsigned copy of the Appellant's Opening Brief,
28 dated October 22, 2009

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A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include a provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the [enforcement] equipment.

Here, the City's contract with Redflex provides that the City will pay Redflex *a flat monthly fee* of \$6,000.00 for each intersection which uses the system ("fixed fee"). As a safeguard to the City, the contract provides that the City "shall never pay . . . Redflex more than actual cash received by City from red light violators." See Agreement Between the City of Daly City and Redflex Traffic Systems, Inc. for Photo Red Light Enforcement Program (the "contract"), Exhibit D.

When interpreting a statute, the Court is tasked with giving effect to the legislative intent and purpose behind the enactment of the statute. See People v. Murphy, 25 Cal. 4th 136, 142 (2001), Hughes v. Board of Architectural Examiners, 17 Cal. 4th 763, 776 (1998). The purpose of Section 21455.5(g) is to ensure that camera operators do not have an incentive to increase the number of citations issued and paid through use of their equipment. See, e.g., California Bill Analysis, A.B. 1022, April 21, 2003, p. 5 ("[P]aying red light camera vendors based on the number of tickets issued undermines the public's trust and raises concerns that these systems can be manipulated for profit.").

1. The City's Contract Complies With the Plain Language of California Vehicle Code Section 21455.5(g)(1)

Statutory interpretation requires the Court to first examine the words of the statute, giving them their usual and ordinary meaning and construing them in the context of the statute as a whole. People v. Garcia, 28 Cal.4th 1166, 1172 (2002); Murphy, 25 Cal.4th at 142. If the plain

1 language of the statute is unambiguous and does not involve an absurdity, the plain meaning
2 governs. Garcia, 28 Cal.4th at 1172; People v. Ledesma, 16 Cal.4th 90, 95 (1997).

3
4 Here, the cost neutrality provisions set forth in the contract at issue comply with the
5 statute. There is no provision for the payment or compensation to Redflex "based on the number
6 of citations generated, or as a percentage of the revenue generated." The provision in question
7 provides for a flat fee, invoiced monthly by Redflex. If the City receives insufficient revenue to
8 pay the flat fee, the balance is carried forward until 12 months after the contract termination. In no
9 event, however, will the City be obligated to pay more than it receives from the enforcement
10 program. The City's contract does not violate the plain language of the Vehicle Code.

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12 **2. The City's Contract Satisfies the Statutory Intent**

13 Even if this Court were to find that the statute at issue was ambiguous, the City's
14 contract satisfies the purpose of the statute, and the contractual language should be upheld on that
15 ground as well. As set forth above, courts may consider a variety of extrinsic aids, including the
16 apparent purpose of the statute, Hughes, 17 Cal.4th at 776. Here, the City's agreement complies
17 with Vehicle Code Section 21455.5(g)(1) because Redflex has no control over the number of
18 citations issued and therefore has no incentive to increase the number of citations generated.

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20 Redflex has no ability to influence the number of citations issued, and therefore it
21 cannot improperly influence its red light camera enforcement system so as to increase the number
22 of citations. The City's contract with Redflex allots to the City the responsibility to evaluate the
23 evidence obtained through Redflex's system before a citation decision is made (by the City).
24 Contract, Paragraph 3.3.5. The contract continues:

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26 **REFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE**
27 **DECISION TO ISSUE A CITATION SHALL BE THE *SOLE*,**
28 ***UNILATERAL AND EXCLUSIVE DECISION* OF THE**

1 AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH
2 AUTHORIZED OFFICER'S *SOLE DISCRETION* (A "CITATION
3 DECISION"), AND *IN NO EVENT SHALL REDFLEX HAVE THE*
4 *ABILITY OR AUTHORIZATION TO MAKE A CITATION*
5 *DECISION.*

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7 Id. (emphasis added). Because Redflex has no control over the issuance of a citation,
8 there is no danger that Redflex will issue excess tickets to cover the costs owed to
9 Redflex by the City.

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11 Furthermore, there is no incentive for Redflex to increase the number of citations
12 generated. Assuming *arguendo* that Redflex generated additional potential citations, the ultimate
13 decision as to whether any citation would issue would be left to the City, in its "sole, unilateral and
14 exclusive discretion." Either the data presented will constitute a violation or it will not. Nothing
15 within the contract, therefore, provides an incentive to Redflex to act irresponsibly, because the
16 City will make the determination in every instance whether the citation should issue. Even if
17 Redflex would prefer for more citations to be levied, it has no ability to take action in furtherance
18 of that goal. The parties' contract thus satisfies the intent and purpose of the Vehicle Code in
19 safeguarding the public.

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21 **B. The Contract's Severability Clause Requires Enforcement Even If the Cost**
22 **Neutrality Clause Is Stricken**

23 A severable illegal provision in a contract does not preclude recovery where the
24 contract is not otherwise tainted with illegality. See Calvert v. Stoner, 222 Cal. 2d 97, 104 (1948).
25 The City's contract with Redflex contains a severability clause that states, "[i]f any provision of
26 this Agreement is held by any court . . . to be void or unenforceable in whole or part, this
27 Agreement shall continue to be valid as to the other provisions thereof and the remainder of the
28 affected provision." [Contract, section 11.6].

