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July 2, 2010

Chief Justice Ronald M. George  
and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

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CLERK SUPREME COURT

Re: City of Menlo Park's Letter in Support of Depublication of Orange County Superior Court, Appellate Decision, *People v Khaled*, 30-2009-00304893 (May 25, 2010)

Dear Chief Justice George and Associate Justices:

The City of Menlo Park ("Menlo Park") wishes to voice its support for depublication of the Orange County Superior Court, Appellate Division, case People v Khaled, 30-2009-00304893 (May 25, 2010). This letter is submitted pursuant to Rule 8.1125(b)(1) of the California Rules of Court, in support of the letter authored by Michael D. Stewart, dated June 23, 2010.

Menlo Park has four red light camera approach intersections, all of which are at extremely busy intersections. Over the years there have been a number of accidents at these intersections, including two recent high profile fatality accidents that were caused by red light violations. Menlo Park has installed red light enforcement cameras for the purpose of protecting drivers on its streets and utilizes this technology as a cost effective method of red light traffic enforcement.

Defendants of red light tickets issued by Menlo Park routinely challenge their citations and raise a number of creative defenses. Menlo Park has been overwhelmingly successful in overcoming defendants' legal challenges to their citations at trial. However, last week Commissioner Stephanie Garratt of the San Mateo County Superior Court found a defendant not guilty based on a defendant's argument that was, in large part, based on the holding of People v Khaled. This decision was immediately reported in the local newspaper, The Daily Post, in an article entitled "Traffic cam tickets tossed" by David DeBolt, dated July 2, 2010.

Menlo Park believes that the decision in People v Khaled was incorrectly decided by the Orange County Superior Court, Appellate Division, and should be immediately depublished. The Court in People v Khaled has taken the mistaken position that photographs and videos taken by red light enforcement cameras are hearsay. However, there is substantial authority that holds that photographs and videos are not hearsay, but are writings that only need be authenticated by an officer witness. *Evidence Code* §§1552, 1553; People v Lugashi(1988) 205 Cal. App 3d 632, 641-644; People v Cooper (2007) 148 Cal App 4<sup>th</sup> 731, 746; and People v Bowley (1963) 59 Cal 2d 855, 860. Furthermore, there is case authority that a traffic infraction defendant has no 6<sup>th</sup> Amendment right to confront a witness. People v Chikosi (May 6, 2010) 2010 WL 1804679.

We believe the decision in People v Khaled was extremely case specific and that the case should be limited. In People v Khaled, the officer witness was not able to lay the foundation for the photographs that were presented to the court nor able to properly explain how the red light camera system worked. On the contrary, Menlo Park officers are fully trained in how the system works and are able to provide testimony regarding the photographic evidence in a clear and concise way to establish that a violation occurred. Much like speeding tickets issued by a radar gun, there is no duty for the manufacturer of the system to testify as to the functioning of the system or to vouch for its accuracy. Such a requirement would create an inordinate cost on Menlo Park and would cause a great waste of judicial time. All that is necessary is for the Menlo Park officer witness to be familiar with how the system works, be able to recognize if the system is not properly working, and to take reasonable precautionary measures to assure the system is properly operating. Lugashi at 24.

It would be a miscarriage of justice if defendants were allowed to cite to the case as precedent and authority that all red light enforcement citations should be dismissed unless there is a percipient witness to the violation and a system manufacturer present for cross-examination. San Mateo County Superior Court judges and commissioners may quite easily be confused by the ruling and wrongfully begin to dismiss cases out of hand. Since the prosecution has limited appeal rights, it will be very difficult, if not impossible, for Menlo Park to challenge the dismissals and present its legal basis for why the Court has made an incorrect ruling.

Therefore, Menlo Park respectfully requests that the Court depublish the decision in People v Khalad as soon as possible, so defendants do not take advantage of the current confusion in the law and so Menlo Park can confidently continue its use of its red

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light enforcement cameras to protect drivers on its streets.

Thank for your consideration of this request.

Sincerely,



Nicolas A. Flegel

NAF:rc

cc: Glen Rojas, City Manager (via e-mail)  
Ray Samuels, Interim Police Chief (via email)  
Sharon Kaufman, Sergeant MPPD (via email)  
William L. McClure, City Attorney (via email)