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**FILING FEE EXEMPT PURSUANT
TO GOVERNMENT CODE §6103**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
HARBOR JUSTICE CENTER
APR 02 2014
ALAN CARLSON, Clerk of the Court
BY L. BABCOCK, DEPUTY

8 Attorney for the People

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ORANGE, HARBOR JUSTICE CENTER
11 NEWPORT BEACH FACILITY

12 PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff,
15 vs.
16 [REDACTED] THO [REDACTED]
17 Defendant.

) Case No.: LW024 [REDACTED] EA
)
) **PEOPLE'S TRIAL BRIEF ON**
) **LEGAL ISSUE REGARDING**
) **ABUSE OF PROCESS**
)
) Hearing Date: April 2, 2014
) Time: 10:00 a.m.
) Dept.: H14

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1 I.
2 FACTS
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4 On September 17, 2012 at 11:59am the Redflex traffic system captured an
5 incident at South Bound Moulton Parkway at Gate 12 and a second incident at
6 12:14pm North Bound Moulton at Gate 12 in the City of Laguna Woods, the
7 County of Orange, State of California. Redflex processed the incidents and
8 provided access to these incidents to Orange County Sherriff's Deputy, Cary
9 Buechler. In the Redflex system, the Deputy could see the registered owner details
10 along with four photographs and a 12 second video for each incident. Deputy
11 Buechler reviewed the pictures and video and determined that a violation of
12 California Vehicle Code section 21453, subsection a, was committed by the driver
13 captured in each incident. She then caused a citation to be issued to the registered
14 owner, W [REDACTED] Mor [REDACTED]. Subsequently, case numbers LW024 [REDACTED] PEA and
15 LW024 [REDACTED] PEA was filed against Mr. Mor [REDACTED].

16 Mr. Mor [REDACTED] set these cases for trial. On or about the day of trial Deputy
17 Buechler requested and received a copy of the DMV soundex which contained a
18 picture of W [REDACTED] Mor [REDACTED]. Deputy Buechler compared the DMV soundex
19 picture with the photographs of the driver captured by the Redflex system and
20 determined he was not the driver. On the afternoon of Mr. Mor [REDACTED] trial, the People,
21 represented by Terese S. Oliver, moved to dismiss case numbers LW024 [REDACTED] PEA
22 and LW024 [REDACTED] PEA.

23 Deputy Ricardo Jurado took up the investigation of these cases. He located
24 who he believed to be the actual driver and caused two citations to be issued to
25 C [REDACTED] Mor [REDACTED] under case numbers LW024 [REDACTED] PEB and LW024 [REDACTED] PEB
26 on March 29, 2012. Mr. C [REDACTED] Mor [REDACTED] retained R. Allen Baylis as his legal
27 counsel on these matters.

1 After numerous pre-trial motions and court dates, these cases came regularly
2 on for trial on March 19, 2014 at 1:30pm in Department H-14, Commissioner Max
3 De Liema presiding. The co-custodian of records for Redflex, Keith Underwood,
4 first testified about his qualifications, training and knowledge in the record keeping
5 and maintenance procedures of Redflex. He then described the security at the
6 Redflex facility in Arizona. He then testified as to how the camera systems and
7 computers work at an intersection monitored by Redflex. Mr. Underwood testified
8 how the photographs and video are processed by Redflex and how information is
9 gathered from the California DMV. This is then provided to trained, and
10 authorized law enforcement officers to review and determine if the incident should
11 be graduated to a citation. He also testified about the maintenance that Redflex
12 performs on the camera and computers at the intersections; he said there were no
13 open work orders during the time that Mr. Mor [REDACTED] citations were issued. Mr.
14 Underwood had brought with him the records of routine monthly maintenance for
15 each set of cameras and computers, performed the month before and the month
16 after each of Mr. Mor [REDACTED] citation date. Mr. Underwood testified that based on the
17 maintenance logs, the camera and systems were in good working order.

18 The People then called Deputy Tom Spratt from the Orange County
19 Sheriff's Department, which is the agency that services the City of Laguna Woods.
20 He testified that when he logs on to the Redflex server, he can access the queue of
21 incidents to review. Deputy Spratt testified that he selects an incident and reviews
22 the pictures and the 12-second video and determines if he were on duty, in
23 uniform, and observed that violation, would he have issued a citation? If the
24 answer is yes, he accepts the incident, causing a citation to be issued to the
25 registered owner of the vehicle pursuant to Vehicle Code section 40518, subsection
26 (a). Deputy Spratt testified that under section 40518, subsection (a), the notice to
27 appear must be issued and sent to the registered owner within 15 days of the date
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1 of violation. The officer then testified to the specifics details for the violation in
2 case number LW024 [REDACTED] PEB. The pictures, video, and DMV soundex were all
3 admitted into evidence.

4 The defense then cross examined the officer. Deputy Spratt admitted that he
5 does not view the DMV soundex of the alleged driver at the time of authorizing the
6 incident to graduate to a citation. The resulting citation is issued to the registered
7 owner of the vehicle per section 40518, subsection (a).

8 At this time the court informed the parties that the court believed that the
9 citations were being issued to someone other than the driver in violation of law.
10 And clearly since the officer was not reviewing the DMV soundex, he could not
11 have a reasonable belief that the registered owner was driving the vehicle at the
12 time of the violation. The prosecutor, Ms. Oliver, explained that the officer was
13 following section 40518, subsection (a). The court then explained that it appears as
14 though the officer is causing citations to issue without the requisite probable cause
15 that the person charged was, in fact, the driver of the vehicle. The court indicated
16 that it appeared that there was a wrong without a remedy and that, even though the
17 court believed C [REDACTED] Mor [REDACTED] to be guilty, it was the court's intention to dismiss
18 both cases (LW024 [REDACTED] EB and LW024 [REDACTED] EB) against Mr. Mor [REDACTED] because the
19 citations never should have been issued to W [REDACTED] Mor [REDACTED]
20 (LW024 [REDACTED] PEA and LW024 [REDACTED] PEA). The prosecution argued that those cases
21 were already dismissed and that it was improper for the court to sanction the
22 People by dismissing a subsequent case filing against the correct defendant.

23 Because of the time, these cases were continued to the following day.

24 On the following day, the prosecution gave the court a copy of *People v.*
25 *Superior Court of San Diego County (Montano)* (1972) 26 Cal. App. 3d 668, 102
26 Cal. Rptr. 925, which holds that when the court entertained no doubt of the
27 defendant's guilt, and there was no question of fairness, the court cannot for purely
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1 subjective reasons dispose of a case by dismissing it. This action was beyond the
2 court's power under California Penal Code section 1385.

3 When this court resumed, it stated that the prosecution had misunderstood,
4 the court was not dismissing under Penal Code section 1385, but rather the
5 dismissal was based on the court's reading of the newly issued Supreme Court
6 case, *People v. Gray* S202483, 2014 WL 961038 (Cal. Mar. 13, 2014). The Court
7 then read from pages 9 and 10 of the decision:

8 "When, as here, a statute sets forth the procedural requirement
9 but does not set forth any penalty for noncompliance, a party may
10 reasonably question whether the statute is merely directory, not
11 mandatory. "[T]he 'mandatory' or 'directory' designation does not
12 refer to whether a particular statutory requirement is obligatory or
13 permissive, but instead denotes 'whether the failure to comply with
14 a particular procedural step will or will not have the effect of
15 invalidating the governmental action to which the procedural
16 requirement relates.'" [Citation.] (*City of Santa Monica v. Gonzales*
17 (2008) 43 Cal.4th 905, 923-924 (*City of Santa Monica*)). Courts must
18 examine "whether the statutory requirement at issue was intended to
19 provide protection or benefit to . . . individuals . . . or was instead
20 simply designed to serve some collateral, administrative purpose."
21 (*People v. McGee* (1977) 19 Cal.3d 948, 963.) If the latter, then it is
22 merely directory, and failure to comply with it does not invalidate
23 later governmental action. (See, e.g., *In re Richard S.* (1991) 54
24 Cal.3d 857, 866 [finding a rule that used the term "shall," but that
25 served only an administrative purpose, to be directory, not
26 mandatory]; *Cal-Air Conditioning, Inc. v. Auburn Union School*
27 *District* (1993) 21 Cal.App.4th 655, 673 [" 'provisions defining time
28 and mode in which public officials shall discharge their duties and
which are obviously designed merely to secure order, uniformity,
system and dispatch in the public bureaucracy are generally held to be
directory' "].)

The mandatory or directory inquiry does not complete the
analysis, however. Our cases have additionally taken into
consideration the purpose underlying the procedural requirement (*City*
of Santa Monica, supra, 43 Cal.4th at p. 924; *Morris v. County of*
Marin (1977) 18 Cal.3d 901, 909-910), and whether the party

1 invoking the procedural requirement is among the class of persons
2 that the requirement was designed to benefit (*People v. McGee, supra*,
3 19 Cal.3d at pp. 962-963). Thus, a statute might be mandatory, but a
4 violation of the statute might nonetheless be inconsequential in a
5 particular case. “ “ ‘No one should be at liberty to plant himself upon
6 the nonfeasances or misfeasances of officers . . . which in no way
7 concern himself, and make them the excuse for a failure on his part to
8 perform his own duty. On the other hand, he ought always to be at
9 liberty to insist that directions which the law has given to its officers
10 for his benefit shall be observed.’ ” ’ [Citations.]” (*City of Santa
11 Monica, supra*, at p. 924.)”

12 This court then stated that it was going to take the case under submission
13 and prepare a written decision. The court encouraged counsel to agree on the facts.

14 The prosecution then informed the court that the trials that had been begun
15 for five cases: 1) C [REDACTED] Mor [REDACTED] LW024 [REDACTED] PEB, 2) C [REDACTED] Mor [REDACTED]
16 LW024 [REDACTED] PEB, 3) [REDACTED] Mis [REDACTED] LW024 [REDACTED] PEB, 4) [REDACTED] Red [REDACTED]
17 LW025 [REDACTED] EA, and 5) [REDACTED] Tho [REDACTED] LW024 [REDACTED] PEA. The prosecution
18 wished to present the testimony and pictures for the remaining cases. At that time
19 the court viewed the photos and video for the remaining cases. The court indicated
20 that it appeared that all defendants were guilty of violating Vehicle Code section
21 21453, subsection (a). However, the court went on to state that it was also inclined
22 to dismiss all of the “A” cases because the Deputy testified that he did not look at
23 the DMV soundex of the registered owner prior to issuing the citation, therefore
24 the prosecution lacked probable cause to properly issue the citation even to [REDACTED]
25 Red [REDACTED] LW025 [REDACTED] PEA and [REDACTED] Tho [REDACTED] LW024 [REDACTED] PEA who are not only
26 the registered owner, but also the drivers of the vehicle.

27 The court then set a further hearing at the prosecution’s request to determine
28 how Deputy Buechler and Deputy Jurado reviewed the incidents in the Redflex
queue prior to issuing a citation and whether or not they reviewed the DMV
soundex prior to issuing citations.

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II.

IT IS NOT ABUSE OF PROCESS TO ISSUE A CITATION, PURSUANT TO VEHICLE CODE SECTIONS 21453, 21455.5, AND 40518, TO THE REGISTERED OWNER OF A VEHICLE, AND UPON DISCOVERING THE VIOLATOR IS NOT THE REGISTERED OWNER, DISMISS THE CASE AGAINST THE REGISTERED OWNER AND ISSUE A NEW CITATION TO THE ACTUAL DRIVER.

A. LEGISLATIVE INTENT PERMITS AND REQUIRES THE CITATION TO FIRST BE ISSUED TO THE REGISTERED OWNER OF THE VEHICLE, THEN THE CITATION MAYBE DISMISSED IF THE REGISTERED OWNER IS NOT THE VIOLATOR, AND SUBSEQUENTLY RE-ISSUE THE CITATION TO THE TRUE VIOLATOR.

1. Statutory analysis

When interpreting statutes, our goal is “to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.” *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567, 67, quoting *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715. The Court in *Gattuso* states that we must first examine the words of the statute, “giving them their ordinary and usual meaning and viewing them in their statutory context, because the statutory language is usually the most reliable indicator of legislative intent.” *Gattuso, supra*, 42 Cal.4th at p. 567, 67.

a. Statutory analysis of Vehicle Code Sections

Driving a vehicle through an intersection against a steady circular red-light is a violation of Vehicle Code section 21453, subsection (a). Automated enforcement systems are plainly authorized under section 21455.5, given that all of the requirements delineated in section 21455.5 are met.

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1 Section 40518 requires:
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3 (a) Whenever a written notice to appear has been issued by a peace
4 officer or by a qualified employee of a law enforcement agency on a
5 form approved by the Judicial Council for an alleged violation of
6 Section 22451, or, based on an alleged violation of Section 21453,
7 21455, or 22101 recorded by an automated traffic enforcement system
8 pursuant to Section 21455.5 or 22451, and delivered by mail within
9 15 days of the alleged violation to the current address of the
10 **registered owner** of the vehicle on file with the department, with a
11 certificate of mailing obtained as evidence of service, an exact and
12 legible duplicate copy of the notice when filed with the magistrate
13 shall constitute a complaint to which the defendant may enter a plea
14 [emphasis added]. Preparation and delivery of a notice to appear
15 pursuant to this section is not an arrest.

16 (b) (1) A notice to appear shall contain the name and address of
17 the person, the **license plate number of the person's vehicle**, the
18 violation charged, including a description of the offense, and the time
19 and place when, and where, the person may appear in court or before
20 a person authorized to receive a deposit of bail [emphasis added]. The
21 time specified shall be at least 10 days after the notice to appear is
22 delivered. If, after the notice to appear has been issued, the citing
23 peace officer or qualified employee of a law enforcement agency
24 determines that, in the interest of justice, the citation or notice should
25 be dismissed, the **citing agency may recommend, in writing, to the
26 magistrate or the judge that the case be dismissed** [emphasis
27 added]. The recommendation shall cite the reasons for the
28 recommendation and be filed with the court. If the magistrate or judge
makes a finding that there are grounds for dismissal, the finding shall
be entered on the record and the infraction dismissed. (2) A notice to
appear shall also contain all of the following information: (A) The
methods by which **the registered owner of the vehicle or the alleged
violinor** may view and discuss with the issuing agency, both by
telephone and in person, the evidence used to substantiate the
violation [emphasis added]. (B) The contact information of the issuing
agency.

1 (c) (1) This section and Section 40520 **do not preclude** the issuing
2 agency or the manufacturer or supplier of the automated traffic
3 enforcement system from mailing a notice of nonliability to the
4 registered owner of the vehicle or the alleged violator prior to issuing
5 a notice to appear [emphasis added]. The notice of nonliability shall
6 be substantively identical to the following form: **PRINTER PLEASE**
7 **NOTE: TIP-IN MATERIAL TO BE INSERTED.** (2) The form
8 specified in paragraph (1) may be translated to other languages.
9 **[Emphasis added]**

10 Reading section 40518, subsection (a) in ordinary and usual meaning, this
11 section requires as procedure, notice of the violation to be mailed to the **registered**
12 **owner of the vehicle** (not the person driving the vehicle) within 15-days of the
13 violation. Therefore the process of citing the registered owner, despite recognizing
14 that they may not be the driver is necessary in order to meet the strict 15-day
15 mailing requirement. If the registered owner provides the identity of the true
16 driver, then the law enforcement agency can re-issue the citation, and the 15-day
17 requirement does not apply to this second mailing. Please also see section 40520
18 subsection (c) below.

19 **b. Effect of the word “whenever” at the beginning of the Code section.**

20 The court pointed out the word “whenever” at the beginning of section
21 40518, subsection (a) and inquired what effect that has on the code section. If
22 subsection (a) is properly interpreted in its plain meaning, then it requires the court
23 and all parties to read the entirety of the subsection. In reading the subsection as a
24 whole, stated simply, it would read that whenever a notice to appear is issued to the
25 registered owner within 15 days of the violation, and a copy of that same notice to
26 appear is filed with the magistrate, then that will constitute the complaint to which
27 the defendant can enter a plea. In other words, before a complaint can be filed with
28 the magistrate, an exact copy has to be sent first to the registered owner within 15

1 days. The “whenever” does not impart a discretionary procedure upon the peace
2 officer, rather taken together, it requires that the registered owner be sent a notice
3 to appear within 15 days of the violation whenever a complaint can be successfully
4 filed. Therefore, a complaint cannot be filed and the driver cannot be brought to
5 justice without first sending a notice to appear to the register owner, not the driver,
6 within 15 days.

7
8 **c. Type of notice required by the Vehicle Code**

9 When the People pointed out to the court that if law enforcement took the
10 time to investigate, locate the real driver, and issue the citation to this individual,
11 once it reaches the court, it would be dismissed because People would have failed
12 to meet section 40518, subsection (a) because the registered owner was not notified
13 within 15 days of the violation. The court believed that notice can be provided
14 without sending a citation or a notice to appear. However, this belief by the court
15 contradicts the exact wording of section 40518, subsection (a) as this section states
16 “[w]henever a **written notice to appear** has been issued by a peace
17 officer....recorded by an automated traffic enforcement system...and delivered by
18 mail within 15 days of the alleged violation to the current address of the **registered**
19 **owner** of the vehicle...an exact and legible duplicate copy of the notice when filed
20 with the magistrate shall constitute a complaint... [emphasis added].” Taken in its
21 literal interpretation, section 40518, subsection (a) requires that a **notice to appear**
22 be sent to the registered owner of the vehicle within 15 days of the violation. A
23 notice to appear by definition is a citation; conversely, a notice of violation is not a
24 citation. The code section uses “notice to appear” therefore a citation MUST be
25 issued to the registered owner within 15 days in order to avoid dismissal.

26 Until the statue is amended to reflect what the court believes should be the
27 proper and practical way of for issuing citations, the law enforcement agents have
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1 no choice but to follow the letter of the law. Requiring a different type of notice to
2 be sent to the registered owner or for only the driver to be notified would
3 contradict the statutory language and intent.

4 The legislative intent for the citation to be first mailed to the registered
5 owner, even if they were not the violator, is demonstrated within the language of
6 section 40518, subsection (b) as well. This section states that the notice to appear
7 shall contain, among other things, the license plate number of the person's vehicle.
8 This language shows that in all cases, the statute intended for the notice to appear to
9 be mailed to the registered owner first. If the statute intended for law enforcement
10 to only send the citation to the violator then subsection (b) would require the law
11 enforcement agency to identify the true driver, then find a vehicle that is registered
12 to that person, assuming they have a vehicle, and then put that license plate on the
13 notice to appear, despite the fact that vehicle was not used to commit the violation.
14 This result makes no logical sense, therefore the only reasonable interpretation of
15 both subsections (a) and (b) of section 40518 is that the citation is required to first
16 be sent to the registered owner thereby meeting the 15-day mailing requirement.

17 Section 40518, subsection (c)(1) states the section does not preclude Redflex
18 or the law enforcement agency from mailing a notice of nonliability to the
19 registered owner of the vehicle or the alleged violator prior to issuing a notice to
20 appear. However, the language in this section is not mandatory. Therefore, while
21 law enforcement can send a notice of nonliability, it is not required. While the law
22 enforcement agency is not expressly precluded from sending a notice of liability in
23 an effort to locate the true driver, the 15-day mailing requirement in subsection (a)
24 implicitly renders mailing a notice of nonliability unfeasible.

25 Language of section 40518, subsection (b)(2)(A) and subsection (c), taken
26 plainly, shows that the legislature intended the notice to appear to be sent to the
27 registered owner. It also recognizes that the registered owner may not necessarily
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1 be the violator. This is demonstrated in the statute's language choice of "registered
2 owner of the vehicle or the alleged violator." This language choice is significant
3 because it shows that the legislature was aware of the scenario when the defendant
4 may be driving a vehicle registered to a different party. When faced with this
5 scenario, the legislature clearly directs that the citation be sent to the **registered**
6 **owner** (see section 40518, subsection (a)), subsequently upon discovering that the
7 vehicle used for the violation belongs to the registered owner and the violator is
8 not in fact the registered owner, a law enforcement agent can recommend dismissal
9 to the judge (see section 40518, subsection (b)). Alternatively, per section 40520,
10 upon receiving the citation accompanied with affidavit of nonliability, if the
11 registered owner was not the driver, if they chose, they can fill out the affidavit of
12 nonliability and identify the true driver.

13 Section 40520 states:

14 (a) A notice to appear issued pursuant to Section 40518 for an
15 alleged violation recorded by an automatic enforcement system shall
16 contain, or be accompanied by, an affidavit of nonliability and
17 information as to what constitutes nonliability, information as to the
18 effect of executing the affidavit, and instructions for returning the
19 affidavit to the issuing agency.

20 (b) (1) If a notice to appear is sent to a car rental or leasing
21 company, as the registered owner of the vehicle, the company may
22 return the notice of nonliability pursuant to paragraph (2), if the
23 violation occurred when the vehicle was either leased or rented and
24 operated by a person other than an employee of the rental or leasing
25 company. (2) If the affidavit of nonliability is returned to the issuing
26 agency by the registered owner within 30 days of the mailing of the
27 notice to appear together with the proof of a written rental agreement
28 or lease between a bona fide renting or leasing company and its
customer and that agreement identifies the renter or lessee and
provides the driver's license number, name, and address of the renter
or lessee, the agency shall cancel the notice for the registered owner to

1 appear and shall, instead, issue a notice to appear to the renter or
2 lessee identified in the affidavit of nonliability.

3 (c) Nothing in this section precludes an issuing agency from
4 establishing a procedure whereby registered owners, other than bona
5 fide renting and leasing companies, may execute an affidavit of
6 nonliability if the registered owner identifies the person who was the
7 driver of the vehicle at the time of the alleged violation and whereby
8 the issuing agency issues a notice to appear to that person.

9 Again, nothing in this section authorizes the law enforcement officer to
10 search the DMV records or any other records to locate the driver of the vehicle,
11 should he or she be different from the registered owner of the vehicle. The Code
12 again uses the words "notice to appear", which is the form used by the People
13 when sending the citation in this case. The Code only provides for the registered
14 owner to sign the affidavit of nonliability if the owner chooses to identify who the
15 driver is. The registered owner is not required to do so. Instead, the registered
16 owner can appear in court and state that they are not the driver. These procedures
17 were followed in the cases against the registered owner, W [REDACTED] Mo [REDACTED]
18 under case numbers LW024 [REDACTED] PEA and LW024 [REDACTED] PEA. The legislature clearly
19 delineates the procedure which the law enforcement and People must follow. Only
20 citing the actual driver, when the driver is utilizing someone else's vehicle would
21 cause the law enforcement agency to violate section 40518, subsection (a), making
22 the citation invalid in its entirety.

23 Section 21455.5 affirms, in pertinent part:

24 (f) (1) Notwithstanding Section 6253 of the Government Code,
25 or any other law, photographic records made by an automated traffic
26 enforcement system shall be confidential, and shall be made available
27 only to governmental agencies and law enforcement agencies and
28 only for the purposes of this article. (2) **Confidential information**
obtained from the Department of Motor Vehicles for the
administration or enforcement of this article shall be held confidential,
and shall not be used for any other purpose [emphasis added].

1 (g) Notwithstanding subdivision (f), the **registered owner** or
2 any individual identified by the registered owner as the driver of the
3 vehicle at the time of the alleged violation shall be permitted to review
4 the photographic evidence of the alleged violation [emphasis added].

5 This statute sheds further light on the legislative intent. First subsection (f)
6 states that the information obtained from the red-light camera systems and from the
7 DMV records shall be confidential. However, directly following, subsection (g)
8 states that notwithstanding the confidentiality concerns, the registered owner of the
9 vehicle is permitted to review the photographic evidenced of the violation, which
10 manifestly indicates that the legislative scheme intended for the citation to first be
11 received and reviewed by the registered owner, even if they were not in fact the
12 driver of the vehicle at the time of the violation.

13
14 **2. Applying *People v. Gray* would be inappropriate since the necessity of**
15 **probable cause to file a complaint and the requirement of Vehicle Code**
16 **section 40518, subsection (a) are contradictory.**

17 The *Gray* case dealt with the requirement of 30-day notice prior to the
18 issuance of citations. *People v. Gray* S202483, 2014 WL 961038 (Cal. Mar. 13,
19 2014). The statutory procedure in *Gray* was not in direct conflict with any other
20 code section or constitutional standard.

21 However, in the present case, based on the extensive arguments presented by
22 both parties, the court's understanding of the code section, and the arguments set
23 forth in this brief, it is clear that requirement of probable cause and requirements of
24 section 40518, subsection (a) are in direct conflict with each other. This presents
25 the court with a unique and novel situation for which a collective solution must be
26 reached without unduly prejudicing either side. "Punishing" the People for
27 following one code section while in violation of another is unfair because if the
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1 People were to follow the requirement of probable cause, it would automatically be
2 in violation of section 40518, subsection (a). While the most obvious and
3 uncomplicated recourse is for the code to be amended to allow for time for a
4 proper investigation to be carried out, instead of setting an unrealistic 15-day
5 deadline, neither the People nor the court possess the power to take legislative
6 action. In an effort to honor both the probable cause requirement section 40518,
7 subsection (a) the notice to appear is being sent to the registered owner first within
8 the 15 days. And in the cases where the register owner is not the driver, those cases
9 are dismissed ON PEOPLE'S OWN MOTION, prior to trial.

10 The defense compared the current case to a hypothetical where an individual
11 robs a convenient store and a camera captures his face and the license plate of the
12 vehicle he was driving. The defense stated that the police do not simply charge the
13 owner of the vehicle with robbery; rather they investigate to find out who was
14 driving the vehicle at the time and compare the video to charge the proper
15 individual with robbery. While the People completely agree that this is the correct
16 procedure for a robbery, the Penal Code does not require notice to be sent to the
17 registered owner within a set amount of time before charging the perpetrator. In a
18 photo enforced red-light case, the Vehicle Code specifies a 15-day deadline within
19 which a notice appear must be sent to the register owner. While an officer can, and
20 does, investigate the case at some point after, the reason he or she is unable to
21 investigate and only send a notice to appear to the driver is because the Vehicle
22 Code requires the officer to do otherwise. In its present state, the requirement of
23 probable cause and requirement of section 40518, subsection (a), are contradictory.
24 The People have remedied this by routinely dismissing cases, on its own motion,
25 against the registered owners who are innocent, without requiring the owners to
26 present a defense in court.

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1 **3. This defendant is not among the class of persons the statute is designed**
2 **to benefit.**

3 Courts have additionally taken into consideration the purpose underlying the
4 procedural requirement and whether the party invoking the procedural requirement
5 is among the class of persons that the requirement was designed to benefit. *People*
6 *v. McGee, supra*, 19 Cal.3d at pp. 962–963. “No one should be at liberty to plant
7 himself upon the nonfeasances or misfeasances of officers ... *which in no way*
8 *concern himself*, and make them the excuse for a failure on his part to perform his
9 own duty.” *People v. Gray*, S202483, 2014 WL 961038 (Cal. Mar. 13, 2014).

10 The intended class of people that section 40518 is trying to protect is the
11 registered owner of the vehicle and the underlying purpose of the procedure
12 outlined in it to give timely notice so that the owner can learn that their vehicle was
13 used to commit a Vehicle Code violation. Logically, the 15-day mailing
14 requirement is comprehensible because the registered owner should be given
15 ample and timely notice so they can recall if another party was driving their car at
16 the time and who that party was.

17 Here, the defendant, who is not the registered owner of the vehicle, has no
18 standing to claim that he did not get proper notice or that the proper procedure was
19 not followed since he is not in the class of people the statute is trying to protect.
20 Alternatively, even if the defendant had standing, proper notice was given to the
21 registered owner, thereby satisfying all requirements.

22 Even if law enforcement was aware of the true violator and had knowledge that the
23 registered owner was not in fact the driver captured in the photograph, section
24 40518, subsection (a) requires that the citation be issued to the registered owner
25 first in order to satisfy the 15 day deadline.

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1 B. INTERPRETING VEHICLE CODE SECTIONS 21453, 21455.5, AND
2 WHO ARE NOT REGISTERED OWNERS OF THE VEHICLES WHICH WERE
3 USED TO PERPETRATE THE VIOLATIONS WOULD RESULT IN
4 ABSURDITY AND GOES AGAINST THE LEGISLATIVE INTENT.

5 **1. The defense interpretation of the relevant Vehicle Code sections would**
6 **lead to absurdity.**

7 "If the statutory language is ambiguous and susceptible of differing
8 constructions, we may reasonably infer that the legislators intended an
9 interpretation producing practical and workable results rather than one resulting in
10 mischief or absurdity." *In re Reeves* (2005) 35 Cal.4th 765, 771. The Court in
11 *Gattuso* went on to say "it is a fundamental tenet of statutory construction that we
12 must give the statute a *reasonable* construction conforming to legislative intent."
13 *Gattuso, supra*, 42 Cal.4th at p. 567, 67. Courts have agreed that we must analyze
14 the language of the sections with these principals in mind. *City of Santa Monica v.*
15 *Gonzalez*, 43 Cal. 4th 905, 919.

16 As demonstrated above, the statutory language is not ambiguous. However,
17 even if the court were to entertain the defense's alternative interpretation, that it is
18 abuse of process for law enforcement to issue citations where the registered owner
19 of the vehicle is not the violator, the defense's interpretation of the relevant code
20 sections would lead to "mischief."

21 The defense indicates that issuing a citation to the registered owner when
22 they were not the driver, subsequently dismissing the citations, and then re-issuing
23 the citation to the true violator is abuse of process. Instead, defense believes that
24 only the driver should be issued a notice to appear. If law enforcement agencies
25 were only allowed to issue citations to drivers who are also the registered owner,
26 then the ruling would essentially create a loophole where defendants can run red-

1 lights in confidence, so long as they are driving a vehicle that is not registered to
2 them. In order to heed to section 40518, subsection (a), a notice to appear has to be
3 first mailed to the registered owner of the vehicle within 15 days. If law
4 enforcement agencies were to only send the citation to the driver, they would be in
5 violation of section 40518, subsection (a), thereby causing all citations where the
6 defendant is driving a vehicle not registered to them to be dismissed. This result
7 would be absurd if all individuals who drove through a red-light using another's
8 vehicle could escape responsibility of violating the law. Dismissing the cases
9 against drivers who actually ran the red-light would go against the legislative intent
10 of not only section 21453 but also sections 40518 and 40520 because essentially, it
11 gives permission to run a red-light so long as one drives a vehicle that is registered
12 to a different person.

13
14 **2. Locating the driver based on a photograph alone is impracticable.**

15 The normal procedure in a photo enforced red-light violation is to issue the
16 notice to appear to the registered owner and upon receiving a nonliability from the
17 registered owner, the deputy would further investigate the violation. However, the
18 court indicated that law enforcement agency must review the soundex, video, and
19 the photos and determine whether there is probable cause, then, and only then,
20 issue the ticket to the driver.

21 However the license plate is the only identifying information that is readily
22 ascertainable from the video and the photos. The identity of the person driving is
23 not ascertainable without more time or advance technology such as facial
24 recognition.

25 Thus issuing the citation to the registered owner is the best option currently
26 available to law enforcement. Recognizing this fact, the code section requires the
27 notice to appear to be sent to the registered owner of the vehicle because the owner
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1 is in the best position to determine whether or not they were driving and whether
2 someone else was driving their vehicle. For example, if the registered owner
3 loaned the vehicle to a friend and this friend drives through a red-light, there is no
4 way to determine the identity of that person, short of going through thousands of
5 licensed drivers. That violator may not even live in this city, this state, or this
6 country. As the court briefly mentioned, there can be an unreasonable invasion of
7 privacy for law enforcement to indiscriminately search through DMV and other
8 records for the potential violator. To make matter worse, if the driver is unlicensed
9 then that driver will never be held responsible.

10
11 **3. Failure to follow Vehicle Code section 40518, subsection (a) in order to**
12 **satisfy a probable cause requirement would lead to "mischief".**

13 Again this additional requirement suggested by the court would essentially
14 allow individuals driving a vehicle that is not registered to them to circumvent the
15 law. This is because the probable cause requirement and the requirements of
16 section 40518, subsection (a) cannot be reconciled.

17 Given the difficulty in identifying the actual driver, it would take law
18 enforcement agencies well beyond the 15 day deadline to locate the driver. Even if
19 the driver is located within the 15 days, the charges against the driver will be
20 dismissed since an initial notice to appear was not sent to the registered owner
21 prior to the complaint. The current process utilized by law enforcement holds
22 individuals responsible for violating the Vehicle Code and endangering the public.
23 Without this process the results would undeniably lead to mischief, as anyone
24 driving a vehicle that is register to another person can drive through a photo
25 enforced intersection without fearing any consequences, rendering the photo
26 enforcement cameras futile.

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III.

1 THE COURT'S DISMISSAL OF EVERY SINGLE RED LIGHT CAMERA
2 CASE IS AN EXTRAORDINARY REMEDY THAT IS UNWARRANTED AS
3 THERE HAS BEEN NO PROSECUTORIAL MISCONDUCT NOR HAS
4 DEFENDANT SUFFERED ANY PREJUDICE IN MOUNTING HIS DEFENSE.

5 The deadlines set forth in section 40518, subsection (a) have resulted in
6 some instances where the registered owner of the vehicle involved in the red light
7 camera infraction, though not driving the vehicle at the time of the infraction,
8 received an initial notice to appear. While those instances are regrettable, they do
9 not rise to the level of an "abuse of process" and certainly do not warrant the
10 dismissal of every single red light camera infraction case brought before this court.

11 "Dismissal of charges is an extraordinary remedy." *People v. Uribe* (2011)
12 199 Cal.App.4th 836, 885. Even in cases of so-called "prosecutorial misconduct,"
13 dismissal (or reversal of conviction on appeal – as the case may be) is not
14 warranted unless the defendant can show that he or she has suffered prejudice as a
15 result of that misconduct. *Id.* at 873; *People v. Arias* (1996) 13 Cal.4th 92, 161 ("It
16 is not reasonably probable that a result more favorable to the defendant would have
17 been reached absent the misconduct or with a curative admonition."); *In re Martin*
18 (1987) 44 Cal.3d 1, 54 (dismissal unwarranted where no showing that prosecutorial
19 misconduct "prejudiced the defense by undermining the defendant's ability to
20 mount a defense"); *People v. Harris* (1989) 47 Cal.3d 1047, 1080. Defendants
21 have previously invoked the Court's inherent "supervisory powers" or "right to
22 control its order of business and to so conduct the same that the rights of all suitors
23 before them may be safeguarded." But such powers "are not unlimited and may not
24 be employed in a way that contravenes a statute" and should not be deployed in
25 support of a dismissal unless "the defendant suffers 'substantial prejudice'" and
26 "no lesser remedial action is available." *Uribe, supra*, at 881-83.

1 In this case, it would be a clear abuse of the Court's discretion to dismiss all
2 red light camera infraction cases simply because some registered owners who
3 initially received a notice to appear were not, in fact, the driver at the time of the
4 alleged violation. In doing so, the court would be "throwing out the baby with the
5 bath water" by dismissing even those cases where there is no dispute that the
6 person before the court is indeed the individual who was operating the vehicle at
7 the time of the alleged infraction (i.e., plainly legitimate red light camera cases
8 being pursued by the People in good faith).

9 Specifically, the cases against [REDACTED] Red [REDACTED] LW025 [REDACTED] PEA and [REDACTED]
10 Tho [REDACTED] LW024 [REDACTED] PEA, where the registered owners were in fact the drivers,
11 fall into this category. In these cases, the court's dismissal because the officer did
12 not compare the soundex to the video and the face image is an unwarranted and
13 extraordinary remedy.

14 The fact that notices to appear were, in some cases, issued to persons who
15 were not operating the relevant vehicles at the time of the respective, alleged
16 infractions does not rise to the level of "prosecutorial misconduct." But even if it
17 did, the defendants in the legitimate cases the court now proposes to dismiss
18 cannot plausibly contend they were "prejudiced" by such "misconduct." The fact
19 that certain individuals received unwarranted notices to appear in other cases has
20 no bearing whatsoever on whether other defendants committed the infractions
21 alleged in their own cases or in any way limits those defendants' right to a fair
22 trial.

23 The People have been unable to find a single case where a court simply
24 dismissed all cases or even some cases of a similar ilk because "misconduct" or
25 "error" was found in a factually unrelated case. The court should not attempt to
26 break new ground where there is simply no basis for a blanket dismissal.

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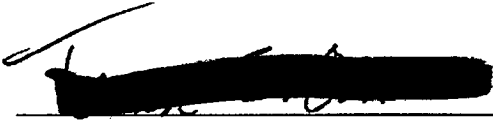
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IV.
CONCLUSION

The People are not, and have not, violated the law or abused the process because the legislature requires the law enforcement officers to implement a procedure that is plainly delineated within the Vehicle Code. Interpreting the Code in any other manner would result in absurd results, and go against the legislative intent. Furthermore, the court's indicated blanket dismissal of charges against all photo enforcement cases is an extraordinary measure that is unwarranted. The People pray that this court reconsiders its position on this issue.

Dated: April 1, 2014

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