filed 6-28

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

JONATHAN B[redacted] ET AL.

Defendants.

Case Nos.: LA046249PE; LA046299PE; LA045864PEA; LA046208PE; LA046455PE; LA046246PE; LA046501PE; LA046696PE; LA046124PE; LA04665PEA; LA047279PE; LA46850PE; LA046835PE; LA045763PE; LA045842PE; LA047028PE; LA047082PE; LA046737PE; LA044977PE

DEFENDANTS' REPLY TO RESPONDENT'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR INADEQUATE YELLOW LIGHT CHANGE INTERVALS PER V.C. 21455.7

Date: June 29th, 2016
Time: 1:30 p.m.
Dept: W7

TO THE ABOVE TITLED COURT AND THE LOS ALAMITOS CITY ATTORNEY

PLEASE TAKE NOTICE that Defendants hereby submits the following Reply to Respondent's Opposition to Defendants' Motion to Dismiss for Inadequate Yellow Light Change Intervals per V.C. 21455.7:

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ARGUMENT

A. CALIFORNIA VEHICLE CODE §21455.7 REQUIRES THAT ONLY THE DIRECTION OF TRAVEL APPROACHING A RED LIGHT CAMERA IS TO BE CONSIDERED WHEN DETERMINING THE 85TH PERCENTILE SPEED

California Vehicle Code § 21455.7 subsection (b) requires that at an intersection utilizing an automated enforcement system, "the minimum yellow light change intervals relating to designated approach speeds provided in the California Manual on Uniform Traffic Control Devices are **mandatory minimum yellow light intervals**." (emphasis added).

"Approach" is defined in the California Manual on Uniform Traffic Control Devices as "all lanes of traffic moving toward an intersection or a midblock location from **one direction**, including any adjacent parking lanes." (Cal. MUTCD section 1A.13.03.11 pg 68, emphasis added.)

This contention that only a single direction of travel is to be considered when setting minimum yellow light change intervals is supported by the testimony of Jay Beeber, who was deemed an expert in yellow light timing by this court during the May 12, 2016 hearing.[1] Beeber served on the subcommittee on Statewide Traffic Signal Timing, which reports their recommendations to CalTrans, and was involved in drafting the changes to the MUTCD at issue here regarding yellow light intervals. Beeber testified during the May 12, 2016, hearing that it was the subcommittee's intention that **only the direction of traffic approaching the intersection should be considered in determining the 85th percentile of speed to calculate the proper yellow light interval.**

[1] Counsel for Defendant and for the City of Los Alamitos have stipulated that the Court may consider expert witness testimony from both Beeber and City Engineer Ruth Smith previously given on case numbers LA044443PE, LA045764PE, LA044422PE, LA044735PE, and LA044242PE on May 12, 2016 before the same Court on the same issues as presented in this motion to dismiss.

B. THE CITY'S ARGUMENT THAT THE MUTCD DOES NOT MENTION USING ONE OR BOTH DIRECTIONS IS WITHOUT MERIT BECAUSE THE VEHICLE CODE SPECIFICALLY USES THE TERM "APPROACH" WHICH IS DEFINED AS A SINGLE DIRECTION

The City asserts that the MUTCD does not specify whether the yellow light interval is to be determined using approach speeds, and does not refer to approach speeds at all. However, that assertion plainly ignores V.C. § 21455.7(b), which states that "designated approach speeds" are to be considered when setting "mandatory minimum yellow light intervals."

In addition, the MUTCD, in § 4D.26 *does* in fact consider the vehicles approaching the intersection. Section 4D.26 states the purpose of the yellow light change interval is to "**warn traffic approaching a traffic signal** that the related green movement is ending or that a steady red indication will be exhibited … and traffic will be required to stop when the red signal is exhibited." (see attached Cal. MUTCD 4D.26.14a) (emphasis added). The purpose of the yellow is to warn traffic approaching the red light signal in question. Traffic moving in the opposite direction is not considered, and for good reason: It simply does not matter what the speed of traffic is traveling away from the light in the opposite direction.

C. THE CITY'S ARGUMENT TO RELY ON THE CALIFORNIA MANUAL FOR SETTING SPEED LIMITS LACKS MERIT

I. The City's Citation From the Manual for Setting Speed Limits Has Nothing to do With Yellow Light Change Intervals

The City's reliance on the California Manual for Setting Speeds, specifically Section 3.4.2, regarding divided roadways, is misplaced. The matter in question is the proper

setting of yellow light intervals, not speed limits. Respondent specifically cites Chapter 3, "Engineering and Traffic Surveys", Part 4, "Speed Zone Design", Section 2 "Directional Differences." This chapter of the Manual discusses the proper protocol for performing Engineering and Traffic Surveys ***for setting speed limits***.

Section 3.4.2, cited by the City, deals with determining the 85th percentile speeds on a divided roadway. It mentions speeds, speed zones, and limits, but does not mention yellow light or signal timing at all. In fact, **there is not a single mention of yellow light times in all of Chapter 3 of the Manual**. The language of § 3.4.2 cited by the city states that the "[speed] zones in opposite directions should be the same for the clarity of the driver and law enforcement purposes." It makes sense that speed limits should be the same in both directions, as motorists and police could be surprised or confused by differing speeds, but that rationale does not exist for setting yellow light durations. Having longer yellows in one direction, or simply setting both directions of yellows to the longer minimum of the two, would not cause the same confusion.

II. The Manual for Setting Speed Limits Supports the Contention that Yellow Light Intervals Should Be Based on a Single Direction of Travel

Regardless of the fact that Manual for Setting Speed Limits, and specifically Chapter 3 as cited by the City, was clearly not intended to be used as for the purpose of determining yellow light timing, the Manual does mention yellow light intervals in Chapter 6. Section 6.2.8 states "Yellow change intervals are based on **approach** speed." (emphasis added.) As discussed earlier, "approach" is clearly defined as traffic coming from a single direction. Thus, the Vehicle Code, MUTCD, Manual for Setting Speed Limits, and the expert witness testimony of Beeber all acknowledge yellow light intervals are to be based on approach speed - a single direction of travel.

D. BECAUSE THE YELLOW LIGHT IS INSUFFICIENT, ALL CASES MUST BE DISMISSED, NOT JUST THOSE LESS THAN 0.28 SECONDS LATE

I. Vehicle Code Section 21455.5(a) Requires that an Automated Traffic Enforcement System Complies with the Mandatory Minimum Yellow Light Intervals as a Precondition for Operation

Vehicle Code § 21455.5 provides:

> (a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, **may be equipped with an automated traffic enforcement system if the governmental agency utilizing the system meets all of the following requirements:**
>
> (1) Identifies the system by signs posted within 200 feet of an intersection where a system is operating that clearly indicate the system's presence and are visible to traffic approaching from all directions in which the automated traffic enforcement system is being utilized to issue citations. A governmental agency utilizing such a system does not need to post signs visible to traffic approaching the intersection from directions not subject to the automated traffic enforcement system. Automated traffic enforcement systems installed as of January 1, 2013, shall be identified no later than January 1, 2014.
>
> **(2) Locates the system at an intersection and ensures that the system meets the criteria specified in Section 21455.7.** (emphasis added.)

There are only two requirements set forth by the Vehicle Code that are necessary for equipment of an intersection with an automated enforcement system. One of those requirements is that the system complies with the minimum mandatory yellow times required under § 21455.7 and the MUTCD. Absent compliance with those mandatory

requirements, the City lacks the authorization to operate the system, and thus all tickets issued at the intersection are void.

II. Existing Case Law Supports that When the Yellow Light Time is Inadequate, All Cases Must be Dismissed

It has long been held that an inadequate yellow light interval renders a safe stop impossible, and constitutes an emergency justifying entry into an intersection when the signal turns red. (*People v. Ausen* (1940) 40 Cal.App.2d Supp. 831, 835.)

The specific issue dealing with an insufficient yellow light time on an automated photo enforcement system has also been recently addressed by the California Appellate Court in *People v. Rekte* (2015) 232 Cal.App.4th 1237. In *Retke*, evidence at trial showed the yellow light interval was set at 3.5 seconds and not the 3.6 seconds required by law. The defendant entered the intersection 0.96 seconds after the light had turned red. Despite the fact the defendant would have been late for the red even if it were set to the proper minimum, the Appellate Court dismissed the case.

Finally, there is additional precedent in California for a city that has determined that it's yellow lights are too-short under the law. In November of 2015, the city of San Mateo, through an internal investigation, determined that two of the city's red light cameras had insufficient yellow light intervals. (see attached article, The Daily Journal, November 11, 2015.) As a result, the city voluntarily chose to refund all 948 tickets that were issued at those two intersections for the period the cameras were not in compliance. Police Sgt. Rick Decker is quoted as saying "Because we care about the integrity of the program, we made a decision to refund all those tickets."

CONCLUSION

The defendants in this matter are not asking the Court to establish new law. The City of Los Alamitos, and perhaps other cities as well, have misinterpreted the

requirements of V.C. § 21455.7 and confused the determination of 85th percentile for purposes of setting yellow light intervals with the purposes of setting speed limits. The facts are undisputed. The 85th percentile speed for westbound traffic at Katella and Bloomfield is 41 mph. The Vehicle Code, MUTCD, and Manual for Setting Speed Limits all reference "approach" speed as the proper method for determining the yellow light interval, and "approach" is defined as traffic from a single direction. The law, and common sense, agree that the yellow change interval must be lengthened to protect motorists at this intersection so they have adequate time to safely respond to a changing light. Further, the City's authorization to even operate the system is based on a requirement to comply with the minimum yellow light times. For that reason, as well as existing case law, the cases of all the defendants named on this motion, as well as any other ticket issued at this intersection since this law went into effect on August 1, 2015, should be dismissed.

Date: 6/28/16

Respectfully submitted,

Scott R. Ball.
Attorney for Defendants