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**IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

ANNETTE B [REDACTED]

Defendant and Appellant,

COURT OF APPEAL - SECOND DIST.

FILED

APR 15 2011

JOSEPH A. LANE Clerk

D. LEE Deputy Clerk

**RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO
DENY CONTINUANCE TO RESPONDENT AND REMOVAL OF
THE CITY OF BEVERLY HILLS AS PARTY; DECLARATION OF
CAROLINE K. CASTILLO IN SUPPORT THEREOF**

William Litvak, Esq. (SBN 90533)
Caroline K. Castillo, Esq. (SBN 236987)
DAPEER, ROSENBLIT & LITVAK, LLP
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Attorneys for Respondent,
THE PEOPLE OF THE STATE OF CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

In her moving papers, Appellant asks this Court to deny the continuance requested by Respondent, the People of the State of California and removal of the City of Beverly Hills ("City") as a Party on the basis that counsel for Respondent is the City Prosecutor. As a threshold matter, the request for extension was by Respondent and not the City.¹ Further, as detailed below and more fully in the attached declaration, pursuant to California Government Code 41803.5, the City Prosecutor has the authority to prosecute and handle all appeals arising from this prosecution on behalf of the People. (Decl. of Castillo, ¶4).

Respondent, therefore respectfully requests that the Court deny Appellant's motion.

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¹ In addition, Appellant's request for continuance is moot as this Court granted the continuance on April 8, 2011.

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LEGAL ARGUMENT

A. THE CITY PROSECUTOR HAS THE AUTHORITY PROVIDED UNDER GOVERNMENT CODE SECTION 41803.5 TO PROSECUTE THIS MATTER

Government Code Section 41803.5 provides in pertinent part as follows:

(a) "With the consent of the district attorney of the county, the city attorney of any general law city... may prosecute any misdemeanor committed within the city arising out of violation of state law..."

As detailed herein and more fully in the attached declaration, the City Prosecutor, pursuant to California Government Code Section 41803.5, has the consent of the Los Angeles County District Attorney's Office to prosecute this matter on behalf of the People (Decl. of Castillo, ¶4).

As to Appellant's argument that the Appellate Division of Los Angeles County Superior Court ("Appellate Division") has struck a brief filed by counsel for City is misleading, as Appellant does not provide this court with a complete representation of the record in that case. As detailed in the attached declaration, after the order striking the brief, counsel filed a motion for relief and the Appellate Division granted the relief requested.

III

CONCLUSION

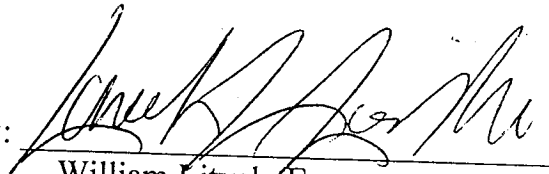
As established herein, Appellant's motion is moot as to the continuance and erroneous as to removal request. Respondent therefore respectfully requests that the Court deny Appellant's motion.

Respectfully submitted,

Dated: April 14, 2011

DAPEER, ROSENBLIT & LITVAK LLP

By:



William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorneys for Respondent,
The People of the State of
California

[Declaration Continues on Next Page]

² Pursuant to California Evidence Code Section 452(d), the People respectfully request that this Court take judicial notice of the Exhibit A and B attached to the declaration of Caroline K. Castillo.

DECLARATION OF CAROLINE K. CASTILLO

I, CAROLINE K. CASTILLO, declare:

1. I am an attorney licensed to practice law before all courts in the State of California and am an associate with the law firm Dapeer, Rosenblit and Litvak, LLP, Attorneys for Respondent, the People of the State of California.

2. This Declaration is based upon facts within my own personal knowledge and is made in support of Respondent's Opposition to Appellant's Motion to Deny Continuance and Removal of The City of Beverly Hills as a Party.

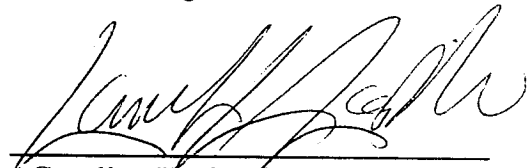
3. Appellant was convicted of failure to stop at a red light signal in the City of Beverly Hills ("City"), a violation of Vehicle Code § 21453(a). Appellant's violation was photographed by the automated red light enforcement system ("ARLES"), installed by the City, pursuant to Vehicle Code § 21455.5.

4. My office, as the designated City Prosecutors for the City of Beverly Hills, pursuant to California Government Code Section 41803.5, has the consent of the Los Angeles County District Attorney's Office to prosecute violations of California Vehicle Code sections 21455.5 and 21453, and related sections, on behalf of the People of the State of California, both at trial level and on appeal.

5. **Attached as Exhibit A and B are true and correct copies of the Motion for Relief filed and the related order, respectively, in the *People v. McGinnis*, Los Angeles County Superior Court Appellate Division, Case Number BR048471. As detailed in the Motion for Relief and related order, my office timely filed and served the a respondent's brief, however, the brief filed was on behalf of the City as real party in interest, instead of the People of the State of California. Accordingly, the Appellate Division granted the requested relief. (See attached Exhibit A and B).**

I declare, under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed this day of April 14, 2011, at Los Angeles, California.



Caroline K. Castillo, Esq.

Appellate Case No. BR04471
LASC Case No. B123663

EXH A

ORIGINAL FILED

MAR 17 2011

(In: McGinnis) LOS ANGELES
SUPERIOR COURT

APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

 MCGINNIS

Defendant and Appellant,

THE PEOPLE'S MOTION FOR RELIEF FROM DEFAULT,
REQUEST FOR AN EXTENSION TO FILE RESPONDENT'S
BRIEF; DECLARATION OF CAROLINE K. CASTILLO IN
SUPPORT THEREOF

William Litvak, Esq. (SBN 90533)
Caroline K. Castillo, Esq. (SBN 236987)
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Los Angeles, CA 90064
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Facsimile: (310) 477-7090

Attorneys for Respondent,
THE PEOPLE OF THE STATE OF CALIFORNIA

(To all parties, etc.)

~~Pursuant to Rules Rule 8.810(c), 8.806(a) and (b), and 8.812, of the~~
California Rules of Court, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA ("People"), respectfully requests that this Court grant its Motion for Relief from Default and Request for Extension of Time to File Respondent's Brief.

Good cause exists to grant Respondent's Motion on the grounds that: (1) Counsel for Respondent timely filed a brief, however, the brief filed was on behalf of the City of Beverly Hills ("City"), as real party in interest, instead of Respondent, People of the State of California ("People"); (2) this Court recently ordered the Brief filed by City to be stricken; (3) The City Prosecutor, pursuant to California Government Code Section 41803.5, has the consent of the Los Angeles County District Attorney's Office to prosecute this matter on behalf of the People; (4) there would be no prejudice to Appellant, who was timely served with the previous identical brief on February 9, 2011 and whose time to file a Reply Brief would be extended if the Court deems it proper.

Accordingly, Respondent respectfully asks that this court to issue an order granting Respondent's Motion For Relief From Default and an extension of time to file its Respondent's brief, concurrently being submitted and served with this application, to March 17, 2011. Respondent further asks

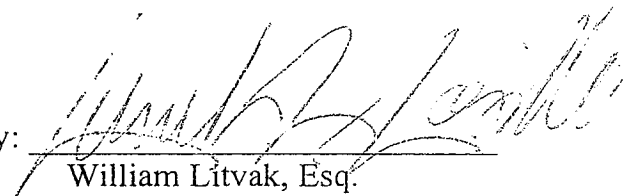
that if the Court deems it proper in order to prevent any prejudice to Appellant, to also extend the time for Appellant to file his Reply Brief, in accordance with the new date of filing for Respondent's Brief.

Respectfully submitted,

Dated: March 16, 2011

DAPEER, ROSENBLIT & LITVAK, LLP

By:



William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorneys for Respondent,
The People of the State of
California

[Memorandum of Points & Authorities Continues on Next Page]

EXH B 2

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

(In: McGinnis)

Appellant was convicted of failure to stop at a red light signal in the City of Beverly Hills, a violation of Vehicle Code § 21453(a). Appellant's violation was photographed by the automated red light enforcement system ("ARLES"), installed by the City, pursuant to Vehicle Code § 21455.5. (Declaration of Caroline K. Castillo ("Decl. of Castillo"), ¶3).

On February 9, 2011, Counsel for Respondent timely served and filed the Respondent's Brief. However, the brief filed was on behalf of the City instead of Respondent, People of the State of California ("People"). (Decl. of Castillo, ¶4). On or about March 7, 2011, this Court ordered the Brief filed by City to be stricken. (Decl. of Castillo, ¶5).

As detailed below and more fully in the attached declaration, pursuant to California Government Code 41803.5, the City Prosecutor has the authority to prosecute and handle all appeals arising from this prosecution on behalf of the People. (Decl. of Castillo, ¶6).

This is Respondent's first request for extension. (Decl. of Castillo, ¶7). There would be no prejudice to Appellant, who was timely served with the previous identical brief on February 9, 2011 and whose time to file a Reply

Brief would be extended if the Court deems it proper. (Decl. of Castillo, ¶7).

Respondent therefore respectfully requests that the Court grant its Motion for Request from Default, and to extend the time for filing its brief. Respondent further requests that the time for Appellant to file his Reply Brief be extended accordingly. (Decl. of Castillo, ¶8).

II

LEGAL ARGUMENT

A. GOOD CAUSE EXISTS FOR THIS COURT TO GRANT RESPONDENT'S MOTION FOR RELIEF FROM DEFAULT.

California Rule of Court ("CRC") Rule 8.812 provides, in relevant part, that this Court "may relieve a party from a default for any failure to comply with these rules...."

As described herein, and more fully in the Declaration of Caroline K. Castillo, good cause exists for this Court to grant Respondent's request for relief from default, because Respondent's Brief would have been timely filed but for the filing of the Brief on behalf of the City, instead of the Respondent, the People of the State of California. (Decl. of Castillo, ¶4-6).

There would be no prejudice to Appellant, since he has already been served with the identical brief on February 9, 2011, and further by a corresponding extension that would be granted by this Court for Appellant to file his Reply Brief. (Decl. of Castillo, ¶7).

B. GOOD CAUSE EXISTS FOR THIS COURT TO GRANT RESPONDENT'S REQUEST FOR ADDITIONAL TIME TO FILE BRIEF.

CRC 8.810(c) provides, in relevant part, that this Court "for good cause... may extend the time to do any act required or permitted..." In turn, Rule 8.806(a) and (b) provide that the presiding judge may grant an application "to extend time to file...briefs..." if it sets forth facts showing "(1) good cause for granting the application, and (2) identify any previous applications relating to the same subject...."

In accordance with its request for relief from default, Respondent also respectfully requests that this Court grant to Respondent an extension on its time to file its brief. This is Respondent's first request for extension. (Decl. of Castillo, ¶7). The Respondent's Brief is being submitted and served concurrently with this application. (Decl. of Castillo, ¶8).

C. THE CITY PROSECUTOR HAS THE AUTHORITY PROVIDED UNDER GOVERNMENT CODE 41803.5 TO PROSECUTE THIS MATTER

Government Code Section 41803.5 provides in pertinent part as follows:

(a) "With the consent of the district attorney of the county, the city attorney of any general law city... may prosecute any misdemeanor committed within the city arising out of

violation of state law...”

As detailed herein and more fully in the attached declaration, the City Prosecutor, pursuant to California Government Code Section 41803.5, has the consent of the Los Angeles County District Attorney’s Office to prosecute this matter on behalf of the People (Decl. of Castillo, ¶6).

Accordingly, Respondent requests relief from default and an extension to file its brief and submits its Respondent’s Brief concurrently with this application. (Decl. of Castillo, ¶8).

III.

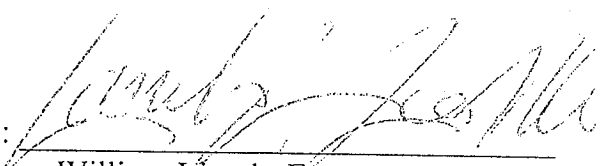
CONCLUSION

As established herein, good cause exist to grant Respondent’s request for relief from default and an extension to file its concurrently submitted Respondent’s Brief.

Respectfully submitted,

Dated: March 16, 2011

DAPEER, ROSENBLIT & LITVAK LLP

By: 

William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorneys for Respondent,
The People of the State of
California

[Declaration Continues on Next Page]

(In: McGinnis)

DECLARATION OF CAROLINE K. CASTILLO

I, CAROLINE K. CASTILLO, declare:

1. I am an attorney licensed to practice law before all courts in the State of California and am associate with the law firm Dapeer, Rosenblit and Litvak, LLP, Attorneys for Respondent, the People of the State of California.
2. This Declaration is based upon facts within my own personal knowledge and is made in support of Respondent's Motion For Relief From Default and Request for an Extension of Time to file Respondent's Brief.
3. Appellant was convicted of failure to stop at a red light signal in the City of Beverly Hills ("City"), a violation of Vehicle Code § 21453(a). Appellant's violation was photographed by the automated red light enforcement system ("ARLES"), installed by the City, pursuant to Vehicle Code § 21455.5.
4. On February 9, 2011, my office timely filed and served the Respondent's Brief. However, the brief filed was on behalf of the City as real party in interest, instead of the People of the State of California.
5. On or about March 7, 2011, this Court ordered the Brief filed by City to be stricken.
6. My office, as the designated City Prosecutors for the City of Beverly Hills, pursuant to California Government Code Section 41803.5, has

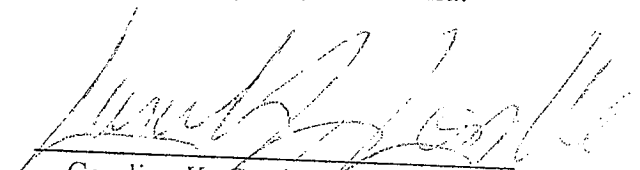
the consent of the Los Angeles County District Attorney's Office to prosecute violations of California Vehicle Code sections 21455.5 and 21453, and related sections, on behalf of the People of the State of California, both at trial level and on appeal.

7. This is Respondent's first and only request for any extension in this matter. There would be no prejudice to Appellant, who was timely served with the previous identical brief on February 9, 2011 and whose time to file a Reply Brief would be extended if the Court deems it proper.

8. Respondent therefore respectfully requests that the Court grant its Motion for Request from Default, and to extend the time for filing its brief. The Respondent's Brief is submitted and served concurrently with this application. Respondent further requests that the time for Appellant to file his Reply Brief be extended accordingly.

I declare, under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed this day of March 16, 2011, at Los Angeles, California.


Caroline K. Castillo, Esq.

(In: McGinnis)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 04 2011

John A. Clarke, Executive Officer/Clerk
By Connie L. Hudson Deputy
CONNIE L. HUDSON

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APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

| | | |
|------------------------------------|---|---------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | No. BR 048471. |
| Plaintiff and Respondent, |) | Beverly Hills Trial Court |
| |) | No. B123663 |
| <u>McGINNIS,</u> |) | |
| Defendant and Appellant. |) | ORDER |

Good cause appearing, respondent's motion for relief from default for the failure to timely file a brief is granted. The clerk is ordered to file the brief submitted with the motion. Any appellant's reply brief shall be served and filed within 20 days of the date of this order.

P. McKay
P. McKay, P.J.

J. Dymant
Dymant, J.