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10 Real Party in Interest City of Daly City

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12 SUPERIOR COURT OF CALIFORNIA – COUNTY OF ALAMEDA

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.

18

19 Real Party in Interest, City of Daly City

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21 I. STATEMENT OF FACTS

22

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.<sup>1</sup> 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 The City respectfully submits this reply brief in support of its contract and enforcement of the  
5 infraction.

6  
7 **I. ARGUMENT**  
8

9 The City's contract with Redflex should be enforced because the cost neutral  
10 agreement between Redflex and the City does not violate California Vehicle Code Section  
11 21455.5(g). Even were the Court to determine that the cost neutrality provision failed that statute,  
12 the contract's severability clause requires enforcement of the rest of the contract, and therefore  
13 enforcement of the infraction against Defendant.

14  
15 **A. The City's Cost Neutral Service Agreement Complies With California Vehicle Code**  
16 **Section 21455.5(g)(1)**

17  
18 California Vehicle Code § 21455.5(g)(1) states in pertinent part:

19  
20 A contract between a governmental agency and a manufacturer or supplier  
21 of automated enforcement equipment may not include a provision for the  
22 payment or compensation to the manufacturer or supplier based on the  
23 number of citations generated, or as a percentage of the revenue generated,  
24 as a result of the use of the [enforcement] equipment.  
25

26  
27 <sup>1</sup> Appellant mailed a non-conformed, unsigned copy of the Appellant's Opening Brief,  
28 dated October 22, 2009

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

7  
8 When interpreting a statute, the Court is tasked with giving effect to the legislative  
9 intent and purpose behind the enactment of the statute. See People v. Murphy, 25 Cal. 4th 136,  
10 142 (2001), Hughes v. Board of Architectural Examiners, 17 Cal. 4th 763, 776 (1998). The  
11 purpose of Section 21455.5(g) is to ensure that camera operators do not have an incentive to  
12 increase the number of citations issued and paid through use of their equipment. See, e.g.,  
13 California Bill Analysis, A.B. 1022, April 21, 2003, p. 5 ("[P]aying red light camera vendors  
14 based on the number of tickets issued undermines the public's trust and raises concerns that these  
15 systems can be manipulated for profit.").

16  
17 **1. The City's Contract Complies With the Plain Language of California Vehicle**  
18 **Code Section 21455.5(g)(1)**

19 Statutory interpretation requires the Court to first examine the words of the statute,  
20 giving them their usual and ordinary meaning and construing them in the context of the statute as a  
21 whole. People v. Garcia, 28 Cal.4<sup>th</sup> 1166, 1172 (2002); Murphy, 25 Cal.4<sup>th</sup> at 142. If the plain  
22 language of the statute is unambiguous and does not involve an absurdity, the plain meaning  
23 governs. Garcia, 28 Cal.4<sup>th</sup> at 1172; People v. Ledesma, 16 Cal.4<sup>th</sup> 90, 95 (1997).

24  
25 Here, the cost neutrality provisions set forth in the contract at issue comply with the  
26 statute. There is no provision for the payment or compensation to Redflex "based on the number  
27 of citations generated, or as a percentage of the revenue generated." The provision in question  
28 provides for a flat fee, invoiced monthly by Redflex. If the City receives insufficient revenue to

1 pay the flat fee, the balance is carried forward until 12 months after the contract termination. In no  
2 event, however, will the City be obligated to pay more than it receives from the enforcement  
3 program. The City's contract does not violate the plain language of the Vehicle Code.

4  
5 **2. The City's Contract Satisfies the Statutory Intent**

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

12  
13 Redflex has no ability to influence the number of citations issued, and therefore it  
14 cannot improperly influence its red light camera enforcement system so as to increase the number  
15 of citations. The City's contract with Redflex allots to the City the responsibility to evaluate the  
16 evidence obtained through Redflex's system before a citation decision is made (by the City).

17 Contract, Paragraph 3.3.5. The contract continues:

18  
19 REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE  
20 DECISION TO ISSUE A CITATION SHALL BE THE **SOLE,**  
21 **UNILATERAL AND EXCLUSIVE DECISION** OF THE  
22 AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH  
23 AUTHORIZED OFFICER'S **SOLE DISCRETION** (A "CITATION  
24 DECISION"), AND **IN NO EVENT SHALL REDFLEX HAVE THE**  
25 **ABILITY OR AUTHORIZATION TO MAKE A CITATION**  
26 **DECISION.**

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

4  
5 Furthermore, there is no incentive for Redflex to increase the number of citations  
6 generated. Assuming *arguendo* that Redflex generated additional potential citations, the ultimate  
7 decision as to whether any citation would issue would be left to the City, in its "sole, unilateral and  
8 exclusive discretion." Either the data presented will constitute a violation or it will not. Nothing  
9 within the contract, therefore, provides an incentive to Redflex to act irresponsibly, because the  
10 City will make the determination in every instance whether the citation should issue. Even if  
11 Redflex would prefer for more citations to be levied, it has no ability to take action in furtherance  
12 of that goal. The parties' contract thus satisfies the intent and purpose of the Vehicle Code in  
13 safeguarding the public.

14  
15 **B. The Contract's Severability Clause Requires Enforcement Even If the Cost**  
16 **Neutrality Clause Is Stricken**

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

23  
24 Accordingly, even if the Court somehow decided the cost neutrality provision of  
25 the contract should be stricken as violating Vehicle Code Section 21455.5(g), the remainder of the  
26 contract is still enforceable. Such a ruling from the Court would only have the effect of  
27 transforming the contract into a straight flat fee contract, that must be paid by the City no matter  
28 how much revenue is generated from the system. The City's contract with Redflex should

1 therefore be deemed enforceable, and the issuance of the citation herein should therefore be  
2 upheld.

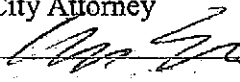
3  
4 **III. CONCLUSION**

5  
6 Defendant has not shown any reason to overcome the admission of relevant  
7 evidence or any authority for dismissal of his/her citation. As such, the Court should proceed with  
8 issuing a decision regarding the validity of the citation.

9  
10 Dated: November 30, 2009

11 Respectfully Submitted,

12  
13 By Kelly Schoft  
14 Asst. City Attorney

15 

16 Attorneys for Real Party in Interest  
17 City of Daly City