This file is the City of Fullerton's Petition for Writ of Mandate in P. v. Franco.

At the back of the Petition is the judge's order.

Received at highwayrobbery.net on 4-24-09

CERTIFICATE OF INTERESTED PARTIES

I, KRISTA MACNEVIN JEE, certify that Petitioner, the People of the State of California By and Through the City of Fullerton, is a governmental entity. Petitioner knows of no entity or person that must be identified to this Court pursuant to California Rules of Court, Rule 8.208.

Dated April 21, 2009

Respectfully Submitted,

JONES & MAYER

By: _____

Krista MacNevin Jee,
Attorneys for Petitioner

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TO THE HONORABLE PRESIDING JUSTICE DAVID G. SILLS AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL:

Petitioner, the People of the State of California by and through the City of Fullerton, respectfully request this Court's extraordinary relief in the form of a writ of mandate, or other appropriate relief, ordering the Appellate Division of the Superior Court to rescind its improper dismissal of the above-referenced matter, due to no notice to, or participation by, the People in the appellate proceedings by which a dismissal was ordered. The failure of the People to be notified of any appellate proceedings in the underlying criminal appeal was a fundamental denial of due process requiring this Court's extraordinary writ relief.

INTRODUCTION

Petitioner, the People of the State of California by and through the City of Fullerton, seek a writ of mandate, or other appropriate relief from this Court as to the Appellate Division's dismissal of the above-referenced matter, due to no notice to Petitioner of any pending appellate proceedings.

Defendant, [redacted] Franco ("Franco"), was charged with running a red light in violation of California Vehicle Code Section 21453 (a) on September 4, 2007, in case number FL45261PE in the Superior Court of the State of California, County of Orange. (See Attachments hereto ("Att."), at 27 (Certified Copy of Docket Report, at p.1, 9/10/07, l. 3)). In particular, she was cited for such violation by way of a red light

camera. (Att. at 27, (Docket Report at p. 1, 12/26/07, l. 9)).

Franco was convicted of such violation and appealed that conviction to the Appellate Division of the Superior Court. (Att. at 28 (Docket Report at p. 2, 12/26/07, l. 19 & 1/11/08, l. 1). Her notice of appeal was filed January 11, 2008. (Att. at 31-80 (Certified copy of Notice of Appeal). Her proof of service indicates that she served a copy of this notice only by mail to the Orange County District Attorney's Office. (Att. at 35).

Although the criminal court docket report indicates that the Superior Court gave notice of Defendant Franco's notice of appeal to "Officer Mcelwee," who is with the Fullerton Police Department, no such notice was ever received by her or the Fullerton Police Department, as set forth herein. (See *infra* at 23; 25-6). In fact, Petitioner is informed and believes from the Criminal Operations Division of the Superior Court, which handles all Traffic and Criminal appeals, that it routinely provides notice of appeals only to the District Attorney. (See *infra* at 25-6).

A hearing on the settled statement on appeal was heard on April 2, 2008. (Att. at 28 (Docket Report at p. 2, 4/2/08, l. 1)). Notice of this hearing was mailed only to Defendant and the District Attorney. (Att. at 28 (Docket Report at p. 2, 3/6/08, l. 1)). Petitioner also did not receive any notice of this proceeding, as set forth herein. At the hearing, the "People [were] represented by Daryl Bassin," who was identified as the "Deputy City Attorney," but does not act in any such capacity for the City of

Fullerton, as set forth herein. (Att. at 28 (Docket Report at p. 2, 4/2/08, l. 5); Att. at 25-6). Petitioner is informed and believes that Mr. Bassin represents the City of *Anaheim*. Judgment was issued on the appeal on December 8, 2008, when the trial court's judgment was reversed and the citation was dismissed. (Att. at 29 (Docket Report at p. 3, 12/8/08, l. 1)).

The above-referenced matter has been dismissed by the Appellate Division of the Superior Court in violation of law and by the time Petitioner discovered that the appellate proceedings had occurred, the time to request reconsideration or transfer to this Court had expired. If this Court does not intervene, the due process rights of the People will have been violated to the detriment of the public interest.

This writ is brought within a reasonable time of the People having inadvertently discovered that appellate proceedings occurred in the above-referenced matter without notice to the People or the People's participation in those appellate proceedings, and due diligence investigation.

PETITION

By this petition, Petitioner, the People of the State of California by and through the City of Fullerton, alleges and shows as follows:

1. Defendant, [redacted] Franco ("Franco"), was charged with running of a red traffic light in the City of Fullerton, in violation of California Vehicle Code Section 21453 (a). (Att. at 27 (Docket Report, at p. 1, 9/10/07, l. 1)). Defendant Franco was convicted of that violation.

(Att. at 28 (Docket Report at p. 2, 12/26/07, l. 19)).

2. Thereafter, Defendant apparently appealed her criminal conviction. (Att. at 28 (Docket Report at p. 2, 1/11/08, l. 1)). Petitioner was given no notice whatsoever, at any time, of Defendant Franco's notice of appeal, any hearing on the settled statement on appeal, or any other appellate proceedings regarding the above-referenced matter; petitioner is informed and believes that such notices, to the extent they were given by the Court and/or Defendant Franco, regarding such proceedings were, instead, given to the Orange County District Attorney's Office. (Att. at 28 (Docket Report at p. 2, 1/11/08, l. 2; 3/6/08, l. 1)). (See Declaration of Kevin Hamilton ("Hamilton Decl."), attached hereto and filed concurrently herewith, at 23; Declaration of Krista MacNevin Jee ("Jee Decl."), attached hereto and filed concurrently herewith, at 25-6). No one on behalf of the People actually participated in any appellate proceedings relating to Defendant Franco. (Jee Decl., at 25-6).

3. Petitioner is informed and believes that Defendant Franco, as part of her appeal, challenged the contract by which the City of Fullerton provides for operation, maintenance and documentation of its red light cameras. In particular, Section 21455.5 of the California Vehicle Code prohibits contracts which allow compensation to a contractor operating automated enforcement equipment "based on the number of citations

generated, or as a percentage of the revenue generated." Cal. Veh. 21455.5 (g)(1). The City of Fullerton maintains that its contract for red light camera maintenance and operation is in compliance with California Vehicle Code Section 21455.5.

4. Petitioner is informed and believes that a hearing on the settled statement on appeal was held on April 2, 2008, at which the People were supposedly represented by "Daryl Bassin, Deputy City Attorney." There is, however, no such individual acting as Deputy City Attorney for the City of Fullerton, as set forth herein. (Jee Decl., at 25-6). Petitioner is informed and believes that Daryl Bassin instead represents the City of Anaheim. (Id.). At no time did Mr. Bassin have authority to act on behalf of Petitioner. Jee Decl., at 26. In addition, except in connection with this Petition, Petitioner had no prior knowledge that Mr. Bassin would be acting, or had acted, on its behalf. (Hamilton Decl., at 23 & 81-83; Jee Decl., at 26).

5. A judgment on appeal was rendered on December 8, 2008 by the Appellate Division of the Superior Court of Orange County, at which time the trial court's conviction was reversed and the citation against Defendant Franco was dismissed. (Att. at 29 (Docket Report, at p. 3, 12/8/08, l. 1); Att. at 30 (Docket Report, at p. 4, 12/26/08, ll. 6-9)).

A true and correct certified copy of the Appellate Division's

order/judgment, at issue in this Petition, is attached hereto at 84.

6. Petitioner is informed and believes that the Appellate Division dismissed the citation due to the City of Fullerton's contract with its automatic red light enforcement equipment operator, and further, that the Appellate Division purported to interpret and/or invalidate such agreement that the City of Fullerton has with its red light camera operator. These invalid and improper actions of the Appellate Division were taken, Petitioner is informed and believes, without notice to Petitioner and/or the City of Fullerton. Petitioner was in fact precluded from participating in the appellate proceeding by the failure of the Superior Court and/or Defendant Franco to provide any notice to Petitioner whatsoever regarding any appellate proceedings being conducted relating to Defendant Franco's conviction. Petitioner is informed and believes that since Petitioner was prevented from participating in the appellate proceedings in the above-referenced matter due to a violation and lack of due process, it is clear that, at a minimum, Petitioner was deprived of its ability to advocate for a proper and full evaluation and interpretation of the contract that the City of Fullerton has with its red light camera operator.

7. Respondent is the Appellate Division of the Superior Court of the State of California in and for the County of Orange, which Division presided over the appellate proceedings relating to Defendant Franco's

criminal conviction appeal referenced above. The Appellate Division was exercising judicial functions in connection with the criminal appeal described hereinabove. (Att. 29 (Docket Report, at p. 3, 7/18/08, ll. 1-5; 12/8/08, l. 1)).

8. By the above actions, in particular the dismissal of the citation against Defendant Franco, without notice to Petitioner as to pending appellate proceedings relating to the conviction of Defendant Franco, was a violation of Petitioner's due process and a miscarriage of justice.

9. Petitioner is beneficially interested in the issuance of a Writ by virtue of the fact that it has a significant interest in the fair and full consideration by the Appellate Division of the merits of Defendant's appeal, and proper consideration and interpretation of the contract between the City of Fullerton and its red light camera operator, as well as Petitioner being entitled to full due process of law, which it was not provided in connection with Defendant Franco's appeal.

10. Petitioner has no plain, speedy or adequate remedy at law save this extraordinary Writ Petition. By the time Petitioner learned of Defendant Franco's appeal and the Appellate Division's dismissal of the conviction, the time had already expired in accordance with the California Rule of Court for any petition for certification of the matter for transfer to

this Court or for any petition for rehearing.

In particular, no written notice was provided to Petitioner of the appellate proceedings in this matter. (Att. at 28 (Docket Report, at p. 2, 1/11/08, l. 2; 3/6/08, l. 1); Hamilton Decl., at 22-3; Jee Decl., at 25-6). In addition, the City of Fullerton Police Department first learned of the appeal and dismissal on or about December 11, 2008, when Jennifer Muir of the Orange County Register contacted Officer Kevin Hamilton for the City's comment on the ruling on the decision on appeal in Defendant Franco's case. (Hamilton Decl., at 22, ¶ 3-6). At approximately the same time, Officer Hamilton received a call from the Orange County Register affiliate reporter Barbara Giasone regarding the ruling. (Id.). At or about the same time, Commissioner Stone informed Officer Ryan Warner of the Fullerton Police Department regarding the ruling, since Officer Warner is a Fullerton motor officer who regularly testifies in traffic court at the North Justice Center of the Orange County Superior Court. (Id.).

11. The Orange County Register article for which Jennifer Muir was seeking comment from the City of Fullerton on the citation dismissal was published on December 12, 2008. Notably, the article reflects the fact that "Fullerton officials were unaware of the ruling until contacted by Register reporters on Thursday." A true and correct copy of this article is attached hereto, at 81-83. See also, Hamilton Decl. at 23-4.

12. No direct appeal lies from Respondent Court's order dismissing the appeal in this matter, and the time had already expired for any application for certification to transfer the matter to this Court, or for re-hearing by the Appellate Division, by the time the City of Fullerton learned of the existence of the appeal and the decision on appeal.

13. If the orders of Respondent Court are permitted to stand, Petitioner will have been deprived of its due process rights in violation of law, and the public interest will have been detrimentally affected, in that a valid criminal conviction will be permitted to have been dismissed without just cause, without valid process of law, and against public policy. In addition, the validity of the City of Fullerton's contract with its red light operator will have been called into question with respect to all past, present, and future red light prosecutions and convictions, without adequate appellate inquiry into the validity of that agreement.

14. Petitioner seeks the within writ as soon as practically reasonable after it learned of the appellate proceedings and decision, and after Petitioner was able to conduct a proper inquiry to determine that it had, in fact, not received notice of the appeal proceedings relating to Defendant Franco's conviction.

PRAYER

WHEREFORE, Petitioner, the People of the State of California by and through the City of Fullerton, prays that this Court:

1. Issue a peremptory writ in the first instance directing Respondent Court to vacate its dismissal of Defendant Franco's conviction, and reconsider the appeal with prior notice to Petitioner, as required by due process of law;

2. Alternatively, first issue an alternative writ directing Respondent Court to vacate its dismissal, or, in the alternative, show cause why it should not do so; and thereafter issue a peremptory writ directing Respondent Court to vacate its dismissal of Defendant Franco's conviction, and to reconsider the with prior notice to Petitioner, as required by due process of law;

3. Award Petitioner its costs in this proceeding; and

4. Grant such other relief as may be just and proper.

Date: April 21, 2009

Respectfully submitted,

JONES & MAYER

By: _____

Kimberly Hall Barlow and
Krista MacNevin Jee,
Attorneys for Petitioner,
People of State of California,
By and Through City of Fullerton

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF PETITION FOR

WRIT OF MANDATE AND/OR PROHIBITION

I.

EXTRAORDINARY RELIEF IS WARRANTED DUE TO PETITIONER RECEIVING NO NOTICE OF ANY APPELLATE PROCEEDINGS.

Writ review is appropriate where there is "not a plain, speedy, and adequate remedy in the ordinary course of law." Cal. Civ. Proc. Code § 1086. Here, the order of the Appellate Division dismissing the underlying criminal conviction, after conducting appellate proceedings for which the People had no notice whatsoever, was in violation of the People's right to due process and fundamental principles regarding the minimum amount of due process that is required to be provided to interested and necessary parties to legal proceedings.

The People are presently without a legal remedy in challenging the Court's order of dismissal, due to the very failure of due process in the conduct of the appellate. Because no notice of the appellate proceedings was provided to the People, the People only inadvertently discovered the ruling and were unable at that time to exercise any of the review procedures provided for Appellate Division rulings. A writ under these circumstances

is clearly warranted. See Chavez v. Superior Court, 123 Cal. App. 4th 104, 108 (2004) ("A writ of mandamus may issue to compel the trial court's performance of an act which the law specifically enjoins. . . .").

A writ petitioner often must demonstrate that he or she will suffer "irreparable injury" if the writ is not granted. Omaha Indem. Co. v. Superior Court (Greinke), 209 Cal. App. 3d 1271, 1274 (1989). There is certainly irreparable injury here, as the People were precluded by the violation of due process from exercising any available appellate or review rights relating to the dismissal, and Petitioner was also deprived of its right to participate in the appellate proceedings and ~~to challenge the order on~~ appeal, by virtue of the failure to give notice in the manner required by law as to the existence of the appellate proceedings. Perhaps most importantly, the findings by the Appellate Division call into question the very validity of a contract between the City of Fullerton and a third party and have potential ramifications relating to all past, present and future red light camera prosecutions by the People.

Since the People were given no notice whatsoever of the existence of any appellate proceedings on Defendant Franco's conviction, the People only inadvertently learned of the proceedings after they had already concluded and, therefore, after the time had already expired as to any remedies to which Petitioner would have otherwise been entitled, such as

filing a petition for certification of the matter for transfer to this Court or for rehearing by the Appellate Division. Given this set of circumstances, resolution of the issues in this matter is necessary appropriate by way of petition for writ of mandate. Anderson v. Superior Court, 213 Cal. App. 3d 1321, 1328 (1989) (claims are entitled to extraordinary relief even if appealable, when "the issues presented are of great public interest") (internal quotations omitted).

The issues presented in this Petition are of great importance, both because of the public interest in fair and full legal proceedings, and due to the implications that the findings and dismissal by the Appellate Division may have on past, present and future prosecutions of red light violations in the City of Fullerton. Finally, writ review in this matter will not cause any of the dilemmas identified by the Court of Appeal in Omaha Indem. Co. relating to the effective administration of justice, namely there will be no delay in a pending proceeding or any piecemeal litigation, since the underlying criminal action has been dismissed. Omaha Indem. Co., 109 Cal. App. 3d at 1272-73.

Furthermore, the error alleged above is not "an 'ordinary judicial error' and thus [is] one which is amendable to the extraordinary writ procedure." People v. Superior Court (Woodfin), 129 Cal. App. 3d 970, 975 (1982). In particular, a writ is proper when there is "any

misinterpretation, misapplication or refusal to follow applicable constitutional, statutory or case law authority." People v. Superior Court (Maldonado), 137 Cal. App. 4th 353, 364 (2006) (internal quotations omitted). Furthermore, "[t]he courts likewise have allowed writ review in situations where the appellate court finds a trial court acted 'in excess of its jurisdiction' by making a decision without hearing evidence when such evidence is required before making that decision." Id. at 367. For instance, "an erroneous judicial recusal denying a district attorney the power to fully function as provided by law, and in the purposes for which he was elected, is substantially more than the 'ordinary judicial error.'" People v. Superior Court (Martin), 98 Cal. App. 3d 515, 520 (1979). A judicial interference with the prosecution's independent power and in violation of fundamental concepts of due process, then, is the proper subject of a writ.

II.

PETITIONER IS ENTITLED TO DUE PROCESS, INCLUDING NOTICE AND THE OPPORTUNITY TO PARTICIPATE IN THE APPELLATE PRIOR TO RESPONDENT COURT'S DISMISSAL OF THE ACTION AGAINST REAL PARTY IN INTEREST, FRANCO.

Defendant Franco apparently claimed during the appellate proceedings challenging her conviction of a red light violation that the contractual agreement between the City of Fullerton and its red light

camera operator was invalid. And without due process of law, the Appellate Division made a determination on such claim, granting her appeal and dismissing the conviction of Defendant Franco, without any notice to, or participation by, the People. This is a manifest violation of due process.

The right of the People to due process is unquestionable. See Miller v. Superior Court, 21 Cal. 4th 883, 896 897 (1999) ("the prosecution's right to due process has been invoked to affirm its right to be heard in various preliminary or collateral proceedings"). The People have a constitutionally recognized "interest in successful prosecutions and . . . [have a] right to due process of law under article I, section 28, subdivision (d) of the California Constitution." Story v. Superior Court, 109 Cal. App. 4th 1007, 1014 (2003) (*citing* Menendez v. Superior Court, 3 Cal.4th at p. 456, fn. 18)).

Furthermore, without question, due process requires "*the opportunity to be heard*, a right that has little reality or worth unless one is *informed* that the matter is *pending* and can choose for himself whether to contest. In the context of the opportunity to be heard, it is not just the defendant but *also the People* who are entitled to due process in a criminal proceeding. In an adversary proceeding where an order may affect the rights of an adverse party, *notice must be given* to protect the adverse party's right to be heard on the issue as a matter of due process of law." Dep't of Corr. v. Superior

Court, 199 Cal. App. 3d 1087, 1092 (1988) (internal citations, quotations and deletions omitted) (emphasis added). In a criminal case, the People of the State of California specifically have the right to due process, pursuant to provisions of the California Constitution, as well as having the right to a speedy and public trial. Cal. Const., art. I, § 29.

The California Supreme Court recently reiterated the fundamental concept of due process being a right of the People, in the context of that Court's consideration of a petition for writ of habeas corpus. The Supreme Court found that a superior court's order was "properly reversed because the court *violated the People's right to due process by not giving them notice or the opportunity to be heard.* Due process required those things at the least. The very purpose of giving the parties notice and the opportunity to be heard is to give them a chance to present information that may affect the decision." In re Large, 41 Cal. 4th 538, 551 552 (2007) (internal citations omitted) (emphasis added).

The Supreme Court has further stated that there is "no doubt that, as a party to the underlying criminal proceeding, the [prosecuting authority] under general due process principles is entitled to notice of the date and place of the hearing . . . . In this manner, if the court requires clarification or explanation of any matters set forth in the supporting affidavits, it will be able to ask questions of both the defense and the prosecution and thus

obtain any information the court deems essential to a fair and proper decision. Alford v. Superior Court, 29 Cal. 4th 1033, 1044 1045 (2003) (internal quotations omitted). For instance, in People v. Gonzales, 235 Cal. App. 2d Supp. 887, 891 (1965), the Court of Appeal found that the lower court could *not dismiss* a criminal case pursuant to California Penal Code section 1385 on its own motion *without affording the prosecution notice and an opportunity to be present.*

Based on the above principles, the People were entitled to notice of the appeal proceedings commenced by Defendant Franco, and they were entitled to participate in those proceedings prior to the Appellate Division exercising its authority to decide her appeal. No more fundamental and self-evident violation of due process could have occurred than the dismissal here of the prosecution and conviction against Defendant Franco by the Appellate Division without any notice or opportunity of the People to be present and heard relating to such appeal. This error was particularly egregious given that the validity of a contractual relationship of the City of Fullerton with a third party was apparently made an issue during the appeal and was ruled upon by the Appellate Division. Not only were the People deprived of the opportunity to be heard on the appeal, but the City of Fullerton, by and through the People, was prevented from participating in proceedings which directly challenged the validity of an on-going

contractual relationship the City has with a third party. More importantly, this contractual relationship is on-going and the Appellate Division's improper decision has a potential impact on past, present and future citations and convictions by the People. These multiple and significant violations of the People's right to due process cannot be permitted to stand, or else the very backbone of our judicial system is detrimentally undermined.

III.

CONCLUSION

This Court's immediate intervention is required to correct the Respondent Court's violations of law and improper dismissal of Defendant Franco's conviction. Petitioner respectfully requests that this Court grant the requested petition, issuing a writ of mandate to Respondent, the Appellate Division of the Orange County Superior Court, to vacate its

dismissal of the criminal matter against [redacted] Franco in Case No. FL45261PE, and enter a new and different order, reinstating the appeal and conducting appellate proceedings in the manner required by law.

Dated: April 21, 2009

Respectfully submitted,

JONES & MAYER

By: _____

Kimberly Hall Barlow and
Krista MacNevin Jee,
Attorneys for Petitioner,
The People of the State of
California, by and through the
City of Fullerton

CERTIFICATE OF COMPLIANCE

I, Krista MacNevin Jee, certify that the attached document entitled VERIFIED PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF consists of 3,987 words, including footnotes. I have relied on the word count of the computer program used to prepare the brief.

Dated: April 21, 2009

JONES & MAYER

By: _____
Krista MacNevin Jee
Attorneys for Petitioner

VERIFICATION

I, Kevin Hamilton, declare:

I am an employee of the City of Fullerton, Petitioner in the above-entitled action. Specifically, I am an officer with the Fullerton Police Department. I have read the foregoing Petition for Writ of Mandate or Other Appropriate Relief; Memorandum of Points and Authorities in Support Thereof and know its contents. Except as to matters stated on information and belief, all the facts alleged in the petition not otherwise supported by citations to the record exhibits, or other documents are true of my own personal knowledge.

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

Executed on April 21, 2009

Kevin Hamilton

4-21-09

DECLARATION OF KEVIN HAMILTON IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

I, KEVIN HAMILTON, DECLARE AS FOLLOWS:

1. I am an officer with the Fullerton Police Department and am an employee of the City of Fullerton, Petitioner in the above-referenced matter. I have personal knowledge of the following facts and could and would testify competently thereto if called upon.

2. I caused a docket report to be obtained from the Superior Court of the State of California, County of Orange on December 15, 2008, regarding Defendant [redacted] Franco, case number FL45261PE. A true and correct copy of that docket report is attached hereto, and incorporated herein by reference, at 27-30.

3. Orange County Register writer Jennifer Muir contacted me on or about December 11, 2008, to inquire about the City of Fullerton's reaction to the dismissal of the citation and reversal of the trial court's judgment on appeal in the above-referenced matter. I informed Ms. Muir that the City of Fullerton had no knowledge of any such appellate proceeding and/or outcome.

4. At about the same time as I received the above telephone call from Ms. Muir, I also received a call from Orange County Register affiliate reporter Barbara Giasone.

5. I thereafter researched the issue and verified that the Fullerton Police Department had not been notified of any appeal, appellate proceedings, or appellate decision relating to the above-referenced matter.

6. As part of my research, I learned from Sergeant Steve Williams that Commissioner Stone had, at or about the same time, informed Officer Ryan Warner of the Fullerton Police Department regarding the ruling, since Officer Warner is a Fullerton motor officer who testifies in traffic court regarding the City's automated traffic signal enforcement program.

7. Prior to the information being obtained by the officers identified above as to the appellate proceedings in this matter, the Fullerton Police Department and Officer Mcelwee, in particular, received no notice whatsoever of the appeal filed by Defendant Franco, the appellate proceedings conducted relating to this matter, or the appellate decision issued on appeal in this matter.

8. The Orange County Register article for which Jennifer Muir was seeking comment from the City of Fullerton on the citation dismissal was published on December 12, 2008. As part of my research of the issues identified in this declaration, I searched on the internet and accessed the Orange County Register article on December 15, 2008 at the website maintained by the Orange County Register. A true and correct copy of that

article is attached hereto, and incorporated herein by reference, at 81-83.

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

Executed this 21 day of April, 2009

Kevin Hamilton

VERIFICATION AND DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT OF PETITION FOR WRIT OF MANDATE

I, Krista MacNevin Jee, declare:

1. I am an attorney licensed to practice law in all the courts in the State of California, and am an Associate with Jones & Mayer and an Assistant City Attorney for the City of Fullerton, Petitioner in the above-entitled action. I have read the foregoing Petition for Writ of Mandate or Other Appropriate Relief; Memorandum of Points and Authorities in Support Thereof and know its contents. Except as to matters stated on information and belief, all the facts alleged in the petition not otherwise supported by citations to the record exhibits, or other documents are true of my own personal knowledge.

1. In particular, I declare that prior to the information being obtained by Fullerton Police Department officers of the appeal as detailed in the above declaration of Kevin Hamilton, Petitioner received no notice of the appeal filed by Defendant Franco, no notice of the appellate proceedings conducted relating to that matter, and no notice of the appellate decision issued on appeal in that matter. I have been informed by the Criminal Operations division of the Superior Court that copies of the notices of appeal in criminal matters are only provided to the District Attorney. At no time did any representative of Petitioner appear in any

appellate proceedings relating to [redacted]Franco, Case No. FL45261PE. Furthermore, there is no individual named Darryl Bassin representing or authorized to represent Petitioner.

2. In addition, this writ is brought as soon as reasonably practicable after Petitioner learned of the appeal proceedings, was able to conduct an investigation regarding whether notice had been provided to Petitioner, and to obtain authority to proceed with this petition for writ.

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

Executed on April 21, 2009

Krista MacNevin Jee

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

DOCKET REPORT

Case : FL45261PE I A

Name : Franco, [redacted]

Date of Action	Seq Nbr	Code	Text
9/10/07	1	FLDOC	**Original Citation filed on 09/10/2007 by Fullerton Police Department.** - 9/10/07
	2	DFADD	Name recorded: Franco, [redacted]
	3	FLCNT	INFRACTION charge of 21453(a) VC filed as count 1. Date of violation: 09/04/2007.
9/11/07	1	DFNPR	Department of Motor Vehicles check returned no assessable priors for this defendant. - 9/11/07
9/12/07	1	CLEXT	Your citation appearance date has been extended to 12/06/07. - 9/12/07
	2	NTSNT	Courtesy Notice sent.
11/16/07	1	REMRC	Remittance from receipt # 6078326 received in the amount of $ 346.00 - 11/16/07
	2	CBLPST	Cash bail posted in the amount of $ $346.00 by Franco, [redacted] Bail is Authorized: Y. Receipt # 6078326.
	3	PLCNG	Defendant declares intention to plead NOT GUILTY on count(s) 1 to the clerk. Cause set for arraignment and court trial on 12/26/2007 at 01:30 PM in Department N1.
	4	NTDEF	Notice to defendant issued.
	5	FSPYR	Credit Card Payment received via telephone.
12/26/07	1	HHELD	**Hearing held on 12/26/2007 at 01:30:00 PM in Department N1 for Arraignment and Court Trial.** - 12/26/07
	2	OFJUD	Officiating Judge: Allen K. Stone, Commissioner
	3	OFJA	Clerk: R. Stamm
	4	OFBAL	Bailiff: P. Baek
	5	TRSTR	**This case came on regularly for trial.**
	6	APDPP	Defendant present in Court in propria persona.
	7	APBOT	Officer Warner, Fullerton Police Department, Law Enforcement Officer, present in court.
	8	TRWST	**Witness, Officer Warner, sworn and testified.**
	9	TREXI	**People's Exhibit # 1 Fullerton Police Department Red Light Camera Court Outline; Notice of Violation, Automated Red Light Enforcement System, Citation Number FL45261PE; Certificate of Mailing, dated 09/07/2007; Department of Motor Vehicles Image Record [redacted] Franco. marked for identification.**
	10	TREXE	**People's Exhibit # 1 received into evidence.**
	11	TRTXT	Commissioner Stone reviews the violation video at the bench while the Officer and Defendant review the video at the counsel table.
	12	TRPRS	People rest.
	13	WAIVES	Defendant waives the following:
	14	WVRSI	- The right against self incrimination.
	15	TRWST	**Witness, [redacted] Franco, sworn and testified.**

DOCKET REPORT

Case : FL45261PE I A

Name : Franco, [redacted]

Date of Action	Seq Nbr	Code	Text	
12/26/07	16	TREXI	**Defense Exhibit # A System Access Log-August 2007; Department of Motor Vehicle publication with section 21453 (a) highlighted; Department of Motor Vehicle publication with section 21455.5 (g)(1) and (2) Paragraph (1) highlighted; Addendum Number Three to Traffic Signal Violation Video-Monitoring System Services Agreement; Nestor Traffic Systems, Inc. Municipality of Fullerton, California Addendum Number Two to the Traffic Signal Violation Video-Monitoring System Agreement; Nestor Traffic Systems, Inc. Municipality of Fullerton, CA. Traffic Signal Violation Video-Monitoring System Service Agreement; O T S Tracks publication dated Winter 2004 page 7 Red Light Camera highlighted. marked for identification.**	- 12/26/07
	17	TREXE	**Defense Exhibit # A received into evidence.**	
	18	TRDRS	Defense rests.	
	19	FDCGC	Court finds defendant GUILTY as to count 1 as charged in the Original Citation.	
	20	PLFWR	Court finds defendant intelligently and voluntarily waives legal and constitutional rights to jury trial, confront and examine witnesses, and to remain silent.	
	21	SEFIN	As to count(s) 1, pay a FINE of $100.00 plus penalty assessments.	
	22	SESEC	Pay Security Fee(s) pursuant to Penal Code 1465.8 totaling $20.00.	
	23	BLABE	Cash bail to apply, balance exonerated. Receipt # 6078326.	
	24	DMABS	DD1-C sent to DMV. Return Code: 800	
12/30/07	1	CSCLS	Case closed.	- 12/30/07
01/11/08	1	FIAPPL	**NOTICE OF APPEAL RECEIVED AND FILED.**	- 1/11/08
	2	APLAPN	District Attorney, Officer Mcelwee and Commissioner Stone notified of Notice of Appeal.	
	3	FIAPLD	Proposed Statement on Appeal filed.	
03/05/08	1	HHELD	**Hearing held on 03/05/2008 at 09:00:00 AM in Department N11 for Chambers Work.**	- 3/5/08
	2	OFJUD	Officiating Judge: Allen K. Stone, Commissioner	
	3	OFJA	Clerk: S. A. Ranieri	
	4	APDNC	Defendant not present in court.	
	5	CLSET2	Hearing re: Appeal - Settled Statement set on 04/02/2008 at 08:30 AM in Department N11.	
	6	NTCSL	Clerk's Office directed to send notice by letter.	
03/06/08	1	NTAPDM	Notice of Hearing on Settlement of Statement on Appeal mailed to Defendant [redacted] Franco and District Attorney.	- 3/6/08
04/02/08	1	HHELD	**Hearing held on 04/02/2008 at 08:30:00 AM in Department N11 for Hearing Appeal - Settled Statement.**	- 4/2/08
	2	OFJUD	Officiating Judge: Allen K. Stone, Commissioner	
	3	OFJA	Clerk: C. Edwards	
	4	OFBAL	Bailiff: P. Baek	
	5	APDCA	People represented by Daryl Bassin, Deputy City Attorney, present.	
	6	APDPP	Defendant present in Court in propria persona.	

0028

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

DOCKET REPORT

Case : FL45261PE I A

Name : Franco, [redacted]

Date of Action	Seq Nbr	Code	Text
04/02/08	7	DFTNC	Defendant states true name and date of birth are correct as shown on the complaint.
	8	ADLCR	Defendant advised of legal and constitutional rights.
	9	FIRST	Written explanation of rights signed by defendant and filed.
	10	DFSTC	All Parties being advised of their right to have this matter heard by a Judge of the court have stipulated that the matter be heard by Commissioner Allen K. Stone.
	11	TEXT	Defendant was advised of the purpose of the Settled Statemant Hearing per Rule 8.788, California Rules of Court. (Entered NUNC_PRO_TUNC on 04/03/08)
	12	TEXT	Defendant was also advised of his rights per the appeal including the right to an attorney at the appeal hearing. (Entered NUNC_PRO_TUNC on 04/03/08)
	13	TEXT	Defendant has no additional documents to file for appeal.
	14	ADTXT	Defendant advised Defendant advised that she will be notified of the date for the appeal hearing. (Entered NUNC_PRO_TUNC on 04/03/08)
	16	TEXT	Case held in Dept. N11 for preparation of the Settlement Statement on Appeal by Commr. Allen K. Stone (Entered NUNC_PRO_TUNC on 04/04/08)
04/03/08	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 04/02/2008.
04/04/08	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 04/02/2008.
07/15/08	1	HHELD	**Hearing held on 07/15/2008 at 09:00:00 AM in Department N1 for Chambers Work.**
	2	OFJUD	Officiating Judge: Allen K. Stone, Commissioner
	3	OFJA	Clerk: S. A. Ranieri
	4	TEXT	Case forwarded to K. Roque for preparation of Settled Statement in a typewritten format.
07/17/08	1	HHELD	**Hearing held on 07/17/2008 at 08:30 AM in Department N1 for Chambers Work.**
	2	OFJUD	Officiating Judge: Allen K. Stone, Commissioner
	3	OFJA	Clerk: C. Edwards
	4	APDNC	Defendant not present in court.
	5	TEXT	Settled Statement on Appeal signed by Commissioner Stone and filed.
08/11/08	1	NTRFR	Receipt for records and papers on Record on Appeal prepared and forwarded to Superior Court Appellate Division, as listed on receipt.
08/26/08	1	FIARFR	Returned Clerk's Certificate of Record on Appeal and Receipt for Records received from Superior Court Appellate Division, 30-200800093057.
10/06/08	1	APLTXT	Motion to Augment the Record on Appeal is granted. The record is augmented to include appellant's "statement of evidence".
12/08/08	1	APLTXT	Judgment on appeal: the judgment of the trial court is reversed, with instructions to dismiss the citation.
12/12/08	1	FIAPLD	Receipt for Records filed.
	2	FIAPLD	Remittitur and Judgment/Order filed.
	3	APLREV	Judgment reversed as to count(s) 1.
	4	TXRFR	Case referred to Commissioner Stone for review.
12/14/08	1	CSCLS	Case closed.

- 4/2/08

DOCKET REPORT

Case : FL45261PE I A

Name : Franco, [redacted]

Date of Action	Seq Nbr	Code	Text
12/26/08	1	HHELD	**Hearing held on 12/26/2008 at 09:00:00 AM in Department N1 for Chambers Work.**
	2	OFJUD	Officiating Judge: Allen K. Stone, Commissioner
	3	OFJA	Clerk: S. A. Ranieri
	4	APDNC	Defendant not present in court.
	5	APTXT	No appearance by the People.
	6	TEXT	Judgment on appeal having been reversed, the trial court has been instructed to dismiss the citation
	7	FDVAC	Court orders Found Guilty by Court as to count(s) 1 vacated.
	8	SVFINE	Court orders $100.00 FINE imposed on 12/26/2007 VACATED as to count(s) 1.
	9	CDCAS	Case dismissed - pursuant to Penal Code 1385 - Furtherance of justice.
	10	BLTXT	$346 to be placed back on deposit and exonerated.
	11	NTCSL	Clerk's Office directed to send notice by letter.
12/28/08	1	DMDEL	DMV Request Deleted. DMV interface DD1 request deleted - No violations to report
12/29/08	1	REMVD	Remittance from Receipt Number 6159003 in the amount of $ -346.00 voided.
	2	BLCXD	Court orders cash bail exonerated. Receipt # 6078326.
	3	FSTXT	PDV R#6159003 to put bail on deposit and exonerate, per court order.
12/31/08	1	TEXT	Notice sent to defendant
01/09/09	1	BLCBRE	Refund transmitted to Auditor Controller in the amount of 346.00 for receipt number 6078326.
01/22/09	1	MAUDMV	Amended DD1 - Abstract of Conviction with dispo codes of a and conviction date of 12/26/2008 transmitted to the Department of Motor Vehicles.

I hereby certify the foregoing instrument consisting of 4 page(s) is a true and correct copy of the original on file in this court.

ATTEST (DATE) APR 13 2009

ALAN CARLSON, EXECUTIVE OFFICER AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

BY H. NORLEEN, DEPUTY

+ recd 4/23

G041919
The People of the State of California v. The Superior Court of California, County of Orange

Superior Court of Orange County

Appellate Defender's, Inc.
District Attorney
Department of Corrections

Kimberly Hall Barlow
Jones & Mayer
3777 N. Harbor Blvd
Fullerton, CA 92835

The Superior Court of California, County of Orange
Hon. Robert J. Moss, Dept. C23
700 Civic Center Dr W 92701

[redacted]Franco
[redacted]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Petitioner,

v.

APPELLATE DIVISION OF THE SUPERIOR COURT OF ORANGE COUNTY,

Respondent;

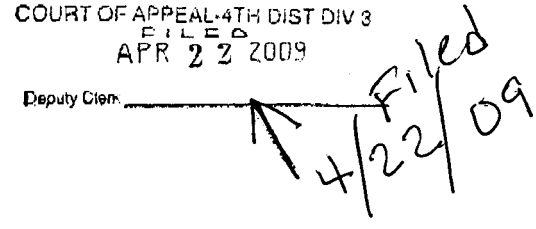
[redacted] FRANCO,

Real Party In Interest.

G041919

(Super. Ct. No. 30-2008-00093057)

O R D E R



Petitioner filed a petition for a writ of mandate. Petitioner is invited to file a supplemental letter brief no later than May 4, 2009, which further explains petitioner's contention that it has no adequate remedy at law. The supplemental letter brief shall address the following:

1. Does petitioner contend that the Appellate Division's judgment is void or merely voidable?
2. Did petitioner file any motion or other application to recall the remittitur and vacate and set aside the Appellate Division's judgment on the grounds raised in this petition? If not, why not, and how does the failure to make such a motion or application affect petitioner's claim it does not

have an adequate remedy at law? If yes, what was the outcome of such motion or application, and why did petitioner fail to attach copies of it to the petition?

3. May petitioner file a motion to recall the remittitur and vacate or set aside the Appellate Division's judgment now? If not, why not?

4. Under what authority may this court take additional evidence as to what occurred below, and as to the practices and procedures of the Appellate Division relative to the service of notice on petitioner that a notice of appeal has been filed in a traffic infraction case?

SILLS, P.J.

SILLS, P. J.