

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 29 2009

ALAN CARLSON, Clerk of the Court

A. Thau
BY A. THAU A

1 JOSEPH W. FLETCHER (SBN 96813)
2 CITY ATTORNEY
3 TERESA L. JUDD
4 DEPUTY CITY ATTORNEY (SBN 233005)
5 CITY OF SANTA ANA
6 20 CIVIC CENTER PLAZA M-29
7 P.O. BOX 1988
8 SANTA ANA, CALIFORNIA 92702
9 TELEPHONE: (714) 647-5201
10 FACSIMILE: (714) 647-6515

11 Attorneys for CUSTODIAN OF RECORDS OF THE
12 CITY OF SANTA ANA POLICE DEPARTMENT

13 APPELLATE DIVISION
14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

16 PEOPLE OF THE STATE OF)
17 CALIFORNIA,)
18 Plaintiff / Respondent,)
19 vs.)
20 [REDACTED] KHALED,)
21 Defendant / Appellant.)

Appellate No.: 30-2009-00304893
Case No.: SA128676PE

**NOTICE OF MOTION AND
MOTION TO INTERVENE AS
REAL PARTY IN INTEREST AND
FOR REHEARING ON SETTLEMENT
OF STATEMENT ON APPEAL;
DECLARATION OF TERESA L. JUDD**

22 CITY OF SANTA ANA POLICE
23 DEPARTMENT,
24 *Real Party In Interest.*

25 **TO DEFENDANT / APPELLANT, COUNSEL FOR DEFENDANT /**
26 **APPELLANT, AND THIS HONORABLE COURT:**

27 PLEASE TAKE NOTICE that the CITY OF SANTA ANA hereby files the
28 instant Motion to Intervene as Real Party in Interest.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The CITY OF SANTA ANA hereby seeks to intervene as a Real Party in Interest
4 in the case at bar. The City of Santa Ana must be considered a Real Party in Interest to
5 this case because the appeal presents a direct challenge to the validity of the City of
6 Santa Ana's automated red light photo enforcement camera system and procedures. As
7 such, any decision by the Court will directly affect the City of Santa Ana and its camera
8 system. Accordingly, the City of Santa Ana Police Department is a Real Party in Interest
9 to the instant matter, and thus has the right to participate in these proceedings.

10 In addition, the City of Santa Ana seeks a rehearing on the Settlement of
11 Statement on Appeal because the court was presented with only one side of the issues
12 involving the underlying proceedings, which relate to the City of Santa Ana's automated
13 photo enforcement system. The City of Santa Ana did not receive any notice or service
14 of the Notice of Appeal, Appellant's Proposed Statement on Appeal, or the Hearing on
15 Settlement of Statement on Appeal for this matter, and as a result the City of Santa Ana
16 was not afforded the opportunity to participate in the hearing.

17 The underlying issue in this case is not only of great concern to the City of Santa
18 Ana, but also potentially affects other cities operating such systems. As such, the City of
19 Santa Ana herein petitions to intervene as a Real Party in Interest in this matter and also
20 moves for a rehearing on the Settlement of Statement on Appeal due to the lack of due
21 process in the proceedings. In the alternative to such a rehearing, the City requests that
22 the Court accept and file the City's Responding Brief to Appellant's Opening Brief in
23 preparation for further proceedings on the instant appeal.

24 **II. THE CITY OF SANTA ANA IS A REAL PARTY IN INTEREST AND**
25 **SHOULD BE AFFORDED THE OPPORTUNITY TO RESPOND TO**
26 **APPELLANT'S PROPOSED STATEMENT ON APPEAL AND OPENING**
27 **BRIEF ON APPEAL**

1 The City of Santa Ana must be considered a real party in interest to this case
2 because the appeal presents a direct challenge to the validity of the City of Santa Ana's
3 automated red light photo enforcement camera system and procedures. As such, any
4 decision by the Court will directly affect the City of Santa Ana and its camera system.

5 In addition, the City of Santa Ana made a prior appearance in this matter as a real
6 party in interest. Specifically, the Santa Ana City Attorney's Office, as counsel for the
7 Custodian of Records for the Santa Ana Police Department, responded in writing on
8 November 19, 2008, to the Defendant's informal discovery requests dated November 10,
9 2008. This response was sent not only to Appellant's counsel but also to the Court. A
10 true and correct copy of this correspondence is attached herewith as Exhibit "A" and
11 incorporated herein by this reference.

12 In previous appeals involving the City of Santa Ana's automated photo
13 enforcement citation system, the City Attorney's office received notice, briefing
14 schedules and notification of oral argument. Further, and more importantly, the Supreme
15 Court recognized that the City of Santa Ana Police Department is a Real Party in Interest
16 in a similar case in which the Court and the ticketed driver simply ceased serving the
17 City of Santa Ana with notice of an appeal of an automated red-light photo citation.
18 (*People v. Fischetti; City of Santa Ana Police Department, Real Party in Interest*, 2009
19 Cal. LEXIS 2544 (Cal., Mar. 10, 2009), amending *People v. Fischetti*, 2009 Cal. LEXIS
20 1589 (Cal., Feb. 25, 2009). In *Fischetti*, the California Supreme Court specifically
21 amended its order granting the City's petition for depublication by changing the case title
22 and adding the City of Santa Ana Police Department as Real Party in Interest. (*Id.*)

23 California Rule of Court Rule 8.901(b) provides that when a notice of appeal of an
24 infraction is filed, the trial court clerk must promptly mail a notification of the file to the
25 parties. A review of the Court Docket indicates that on April 29, 2009, Defendant's
26 Notice of Appeal was received and filed with the Court for the case at bar. The Court
27 Docket also indicates that on April 29, 2009, the Proposed Statement on Appeal was
28 filed by the Appellant. However, the City never received notice or actual service of

1 either Appellant's Notice of Appeal or Proposed Statement on Appeal. The Docket also
2 indicates that on May 19, 2009, the Notice of Hearing on Settlement of Statement on
3 Appeal was mailed to Defendant, the District Attorney's Office and defense counsel, but
4 not to the City of Santa Ana. In addition, according to the Court Docket, the hearing on
5 the Proposed Statement on Appeal was heard by the underlying Court on May 29, 2009.
6 However, since the City was not provided notice of the appeal or the hearing, the City
7 was not present.

8 On May 29, 2009, after first becoming aware of the appeal, the City of Santa Ana
9 filed a motion to intervene as Real Party in Interest and requesting a rehearing on the
10 Settlement of Statement of Appeal. Thereafter, on September 23, 2009, the Court
11 officially served the City of Santa Ana with Notice of Filing Record on Appeal and
12 Notice of Briefing Schedule.

13 Accordingly, the City timely filed a Response Brief on November 23, 2009.
14 However, this Court issued a Minute Order dated December 9, 2009, rejecting the City's
15 filing without prejudice to the making of a motion to appear as real party in interest in
16 this matter. As such, the City files the instant Motion to officially intervene in the instant
17 matter as a real party in interest.

18 The prospect that the Appellate Division may decide a case of this nature with
19 briefing and oral argument by only a single party makes a sham of the adversarial
20 system. As the United States Supreme Court has noted, the adversarial system is a
21 bedrock principle of the Anglo-American system of justice. "[Truth], Lord Eldon said,
22 'is best discovered by powerful statements on both sides of the question.' This dictum
23 describes the unique strength of our system of criminal justice. 'The very premise of our
24 adversary system of criminal justice is that partisan advocacy on both sides of a case will
25 best promote the ultimate objective that the guilty be convicted and the innocent go free.'
26 *Herring v. New York*, 422 U.S. 853, 862 (1975)." *United States v. Cronin*, 466 U.S. 648,
27 655 (1984) (footnote omitted).

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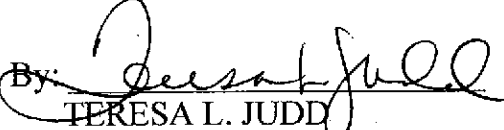
1 Here, the underlying issue in this case is not only of great concern to the City of
2 Santa Ana, but also potentially affects other cities operating such systems. In not being
3 afforded notice of the appeal, Appellant's Proposed Statement on Appeal, or the Hearing
4 for the same, and in the rejection of the City's Responding Brief to Appellant's Opening
5 Brief, the City of Santa Ana has been denied the opportunity to respond and is therefore
6 fundamentally denied notice and the opportunity to be heard on an issue that has
7 potential severe consequences for the City of Santa Ana, as well as other cities
8 throughout the state. The failure to allow the City of Santa Ana any opportunity to be
9 heard on the validity of its photo enforcement system is of major character. As such, the
10 failure to provide any notice to the City service of the Appellant's Notice of Appeal, or
11 notice of the Hearing on Settlement of Statement on Appeal on the same, deprives the
12 City of Santa Ana of due process.

13 As such, the City of Santa Ana respectfully requests this Court grants its Motion
14 to Intervene as a Real Party in Interest in this matter. In addition, the City of Santa Ana
15 respectfully requests this Court grant its Motion for a Rehearing on the Settlement of
16 Statement Hearing so that the City may sufficiently respond. In the alternative to such a
17 rehearing, the City requests that the Court accept and file the City's Responding Brief to
18 Appellant's Opening Brief in preparation for further proceedings on the instant appeal.

19
20 Respectfully submitted,

21 JOSEPH W. FLETCHER
22 City Attorney

23
24 Dated: December 29, 2009

25 By: 
26 TERESA L. JUDD
27 Deputy City Attorney
28

1 **DECLARATION OF TERESA L. JUDD**

2 I, Teresa L. Judd, hereby declare as follows:

3 1. I am an attorney duly admitted to practice law before all of the courts of the
4 State of California. I am a Deputy City Attorney for the City of Santa Ana and represent
5 the Custodian of Records for the City of Santa Ana and the City of Santa Ana as a Real
6 Party in Interest in issues relating to the City's automated red light photo enforcement
7 camera system and procedures.

8 2. If called to testify as a witness in this matter, I could and would testify,
9 based upon personal knowledge unless stated otherwise upon information and belief, as
10 follows:

11 3. On November 19, 2008, as counsel for the Custodian of Records for the
12 Santa Ana Police Department, I responded in writing to the Defendant's informal
13 discovery requests dated November 10, 2008, for the matter entitled, *People v. Khaled*,
14 Case No. SA128676PE. This response was sent not only to Appellant's counsel but also
15 to the Court. A true and correct copy of this correspondence is attached herewith as
16 Exhibit "A" and incorporated herein by this reference.

17 4. To my knowledge, at no time after the trial was heard in this matter was the
18 City of Santa Ana provided notice of the Notice of Appeal, Appellant's Proposed
19 Statement on Appeal, or the Hearing on Settlement of Statement on Appeal. The City of
20 Santa Ana City Attorney's Office first became aware of the appeal of this matter on or
21 around May 27, 2009.

22 5. According to the Court Docket, the hearing on the Proposed Statement on
23 Appeal was heard by the underlying Court on May 29, 2009. However, since the City
24 was not provided notice of the appeal or the hearing, the City was not present.

25 6. On May 29, 2009, after first becoming aware of the appeal, the City of
26 Santa Ana filed a motion to intervene as Real Party in Interest and requesting a rehearing
27 on the Settlement of Statement of Appeal.

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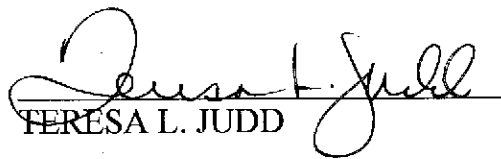
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7. On September 23, 2009, the Court served the City of Santa Ana with Notice of Filing Record on Appeal and Notice of Briefing Schedule.

8. The City timely filed a Response Brief on November 23, 2009. However, this Court issued a Minute Order dated December 9, 2009, rejecting the City's filing without prejudice to the making of a motion to appear as real party in interest in this matter.

9. To my knowledge, in previous appeals involving the City of Santa Ana's automated photo enforcement citation system, the City Attorney's office received notice, briefing schedules and notification of oral argument from the Appellant and/or the Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of December 2009, at Santa Ana, California.


TERESA L. JUDD

EXHIBIT

A

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Claudia C. Alvarez
COUNCIL MEMBERS
P. David Benavides
Carlos Bustamante
Michele Martinez
Vincent F. Sarmiento
Sal Tinajero



CITY MANAGER
David N. Ream
CITY ATTORNEY
Joseph W. Fletcher
CLERK OF THE COUNCIL
Patricia E. Healy

CITY OF SANTA ANA
OFFICE OF THE CITY ATTORNEY

20 CIVIC CENTER PLAZA M-29 • P.O. BOX 1988
SANTA ANA, CALIFORNIA 92702
(714) 647-5201 • Fax (714) 647-6515

November 19, 2008

SENT VIA U.S. MAIL

R. Allen Baylis, Esq.
9042 Garfield Avenue, Suite 306
Huntington Beach, California 92646

Re: *People v. Khaled*
Orange County Superior Court Case No. SA128676PE

Dear Mr. Baylis:

The Santa Ana Police Department received your request for discovery pertaining to the above-referenced matter dated November 10, 2008. This letter is provided in response to your request and to inform you of the method by which you may obtain the requested discovery pursuant to *Penal Code* Sections 1054, *et seq.*

I am informed that the Santa Ana Police Department has ordered an evidence package in this matter and it should be received shortly. In addition, *Penal Code* Section 1054.1(a) requires the prosecuting attorney to disclose the names and addresses of persons the People may call as witnesses. The District Attorney's office is charged with prosecution of California *Vehicle Code* violations, however, they do not staff traffic infraction trials in Orange County Superior Court. The City Attorney's office does represent the Custodian of Records for the Santa Ana Police Department. Thus, when a discovery request on a traffic matter is received our office attempts to respond with those items required to be produced under the *Penal Code*. Without question, your requests went beyond the discovery obligation of the agency, however, the Santa Ana Police Department responds and the following disclosure is hereby made:

Officer Mark Bell, 60 Civic Center Plaza, Santa Ana, California 92702
Officer Gary Fratus, 60 Civic Center Plaza, Santa Ana, California 92702
Officer Alan Berg, 60 Civic Center Plaza, Santa Ana, California 92702
Officer James Berwanger, 60 Civic Center Plaza, Santa Ana, California 92702
Vinh Nguyen, City of Santa Ana, 20 Civic Center Plaza, Santa Ana, California 92702
Anthony Parrino, Redflex Traffic Systems, Scottsdale, AZ
Edward Tiedje, Redflex Traffic Systems, Scottsdale, AZ

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November 19, 2008
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Penal Code Section 1054.1(b)-(f) requires disclosure of any statements of a defendant, all relevant real evidence seized or obtained, the existence of a felony conviction of any material witness (there are none in this instance), and exculpatory evidence, and any relevant written or recorded statements of witnesses the prosecutor intends to call at trial.

All real evidence obtained as part of the Santa Ana Police Department's investigation of the charged offense against your client is available for your inspection. Additionally, you may examine items falling within the categories of documents you requested, if those items exist and are not properly classified as work-product or privileged communications. Should you desire a copy of a certain document the Police Department will provide you with a copy at no charge. Voluminous documents may require a short time period for processing or you may choose to arrange for a copy service to be present at your scheduled appointment time.

Please contact the Photo Enforcement Unit at (714) 245-8240 and indicate that you would like to schedule an appointment to obtain any physical evidence and examine documents. If you intend to have a copy service accompany you to the document examination, please advise the Clerk of this the time you make your appointment.

The following additional items you have requested are hereby responded to or specifically objected to on the following grounds:

Request No. 1

See above.

Request No. 2

See above.

Request No. 3

The Santa Ana Police department is not aware that any affidavits of nonliability were submitted in relation to this case. However, to the extent such documents exist, they would be included in the material available for inspection and copying at the Santa Ana Police Department.

Request No. 4

City of Santa Ana
Department of Public Works, Traffic Engineering
20 Civic Center Plaza
Santa Ana, CA 92702

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Request No. 5

All materials that the Santa Ana Police Department intends to offer as evidence at trial are available for inspection and copying at the Santa Ana Police Department.

Request No. 6

All materials that the Santa Ana Police Department intends to offer as evidence at trial are available for inspection and copying at the Santa Ana Police Department.

Request No. 7

A copy of the citation is available for inspection and copying at the Santa Ana Police Department.

Request No. 8

The Santa Ana Police department is not aware of any statements regarding the case other than those set forth in the material available for inspection and copying at the Santa Ana Police Department.

Request No. 9

The Santa Ana Police Department is not aware of any handwritten notes and/or case memorandums regarding this matter. However, all information that the Santa Ana Police Department intends to offer as evidence at trial is available for inspection and copying at the Santa Ana Police Department.

Request No. 10

Digital cameras do not require calibration, nor is there any way to calibrate the camera. Maintenance Job Statistics for the intersection of Seventeenth Street and Tustin Avenue are available for inspection and copying at the Santa Ana Police Department.

Request No. 11

The information requested is available for inspection and copying at the Santa Ana Police Department.

Request No. 12

The information requested is available for inspection and copying at the Santa Ana Police Department.

Request No. 13

The information requested is available for inspection and copying at the Santa Ana Police Department.

Request No. 14

A copy of the citation, all photos, a DMV Soundex, and video are available for inspection and copying at the Santa Ana Police Department.

Request No. 15

Objection. This request is overly broad in that it requests information for a period of 120 days. Without waiving said objections, the Santa Ana Police Department responds as follows: Digital cameras do not require calibration, nor is there any way to calibrate the camera. Maintenance Job Statistics for the intersection of Seventeenth Street and Tustin Avenue and yellow timing information are available for inspection and copying at the Santa Ana Police Department.

Request No. 16

Objection. This request calls for information that is protected from disclosure by the attorney-client and/or work-product privileges. However, without waiving said objection, the Santa Ana Police Department responds as follows: Maintenance Job Statistics for the intersection of Seventeenth Street and Tustin Avenue are available for inspection and copying at the Santa Ana Police Department.

Request No. 17

Objection. Section 21455.5(c)(1) does not require that the guidelines be written. However, without waiving said objection, the Santa Ana Police Department responds as follows: to the extent that there are written guidelines, they are available for inspection and copying at the Santa Ana Police Department.

Request No. 18

Objection. Section 21455.5(c)(2)(A) does not require that the guidelines be written. However, without waiving said objection, the Santa Ana Police Department responds as follows: to the extent that there are written guidelines, they are available for inspection and copying at the Santa Ana Police Department.

Request No. 19

A copy of the contract with Redflex is available for inspection and copying at the Santa Ana Police Department.

Request No. 20

Objection. The Santa Ana Police Department is not the prosecuting agency and is under no obligation to turn over *Brady* material. However, without waiving said objections, the Santa Ana Police Department is not aware of any information or material favorable to the accused, material either to guilt or punishment, or mandated by the United States Constitution.

- a. Objection. The request may call for information protected from disclosure by the attorney-client and/or work-product privileges. However, without waiving said objection, the Santa Ana Police Department responds as follows: The Santa Ana Police Department is not aware of any exculpatory evidence favorable to the defendant in this matter.

Ltr. to Mr. Baylis
People v. Khaled
November 19, 2008
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- b. Objection. This request assumes facts not in evidence, namely that the photo enforcement program is both selectively and discriminatorily enforced. Without waiving said objection, the Santa Ana Police Department responds as follows: the Santa Ana Police Department has no documents responsive to this request.

Request No. 21

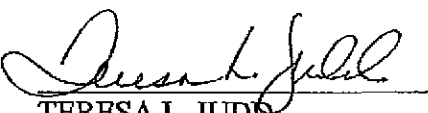
Objection. This request is overly broad in that it requests documents for the last seven years. However, without waiving said objection, the Santa Ana Police Department responds as follows: a copy of the most recent speed survey is available for inspection and copying at the Santa Ana Police Department.

Request No. 22

Objection. The requested information is irrelevant and overly broad. In addition, disclosure of the requested information to a third party would constitute an unwarranted invasion of privacy. Further, the requested information and records are confidential and protected from disclosure by *California Government Code* Section 6254(f) and *California Vehicle Code* Section 20012.

Very truly yours,

JOSEPH W. FLETCHER
City Attorney

By: 
TERESA L. JUDS
Deputy City Attorney

TLJ:

Cc: Officer Gary Fratus, Santa Ana Police Department, Photo Enforcement

Orange County Superior Court
Central Justice Center, Department C54
Attn.: Clerk – Lodge with Case No. SA128676PE
700 Civic Center Drive West
Santa Ana, CA 92701

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PROOF OF SERVICE
(C.C.P. SECTION 1013(a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county; I am over the age of eighteen and not a party to the within action; my business address is 20 Civic Center Plaza, 7th Floor, Santa Ana, California 92702.

On December 29, 2009, I served the foregoing document scribed as: **NOTICE OF MOTION AND MOTION TO INTERVENE AS REAL PARTY IN INTEREST AND FOR REHEARING ON SETTLEMENT OF STATEMENT ON APPEAL; DECLARATION OF TERESA L. JUDD** in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

R. Allen Baylis
Attorney at Law
9042 Garfield Avenue, Suite 306
Huntington Beach, CA 92646

BY MAIL I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 29, 2009 at Santa Ana, California.



JEANETTE M. PALMA