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September 21, 2010

VIA FEDERAL EXPRESS

Honorable Ronald M. George, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

Re: *People of the State of California v. Danny Byongun Park*
Court of Appeal No. G044115; Orange County Superior Court
Case No. 30-2009-00329670

To the Chief Justice and the Associate Justices of the California Supreme Court:

The City of Santa Ana respectfully requests depublication of the Orange County Superior Court, Appellate Division's opinion in *People v. Park*, Appellate No. 30-2009-00329670, pursuant to California Rules of Court, Rule 8.1125(a). The *Park* opinion was certified for publication on July 23, 2010. For the Court's convenience, we have enclosed the opinion with this letter (marked as Exhibit 1).

The City of Santa's interest in depublication is based on the fact that the City of Santa Ana continues to operate a red light camera enforcement system throughout the City. In the *Park* matter, the City submitted an amicus brief to the Appellate Division, arguing that the City of Santa Ana's system met the requirements of *Vehicle Code* Section 21455.5.

In summary, the appellate court in *Park* reversed the conviction of the appellant Danny Park because the record demonstrated a lack of compliance with the warning requirement of *Vehicle Code* Section 21455.5. Specifically, the court interpreted the requirements of Section 21455.5(b), to apply each and every time a camera is installed at a new intersection within the City.

The appellate court, relying on a misguided analysis of the term "system" and the legislative intent of only arguably relevant history and a rejected legislative amendment, interpreted "system" to mean "camera" or "equipment." As discussed below, this

interpretation is incorrect. Moreover, like the *Fischetti* opinion, which this honorable Court recently ordered depublished,[1] the *Park* opinion may soon be preempted by a case pending before the California Supreme Court.[2] Accordingly, we respectfully request that this opinion be depublished.

Basis for Request:

I. Appellate Division's Interpretation of Vehicle Code Section 21455.5 is Incorrect

The *Park* decision should not be published because the court's interpretation of *Vehicle Code* Section 21455.5 is incorrect. It ignores the plain meaning of the word "system," as used in *Vehicle Code* Section 21455.5 and related sections. Instead, the court finds ambiguity in the meaning of the term and relies on the legislative history pertaining to automated rail crossing enforcement systems, not red light camera, and focuses on a proposed amendment of Section 21455.5 that was not adopted by the Legislature.

It is established that before operating an automated traffic enforcement system, a local agency must comply with *Vehicle Code* Section 21455.5(b), which states in pertinent part that, "[p]rior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program."

The statutory scheme makes several references to the "system." When used in *Vehicle Code* Section 21455.5 and 21455.6, the term "system" refers to the overall coordination and installation of red light camera cameras throughout a city's jurisdiction. For example, *Vehicle Code* section 21455.6 states that, "A city council… shall conduct a public hearing on the proposed use of an automated enforcement system…" In addition, *Vehicle Code* section 21455.5(c) provides that, "[o]nly a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system." Further, *Vehicle Code* section 21455.5(d) makes reference to "[t]he activities listed in subdivision (c) that relate to the operation of the system."

In contrast, when referring to individual cameras that together make up the "system," the statutory scheme uses the term "equipment." For example, *Vehicle Code* section 21455.5(c)(2)(B) mandates that the "equipment" is regularly inspected. In

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[1] *People v. Fischetti* (Thomas James), 2009 Cal. LEXIS 1589 (Cal., Feb. 25, 2009)
[2] *In re Red Light Photo Enforcement Cases*, 193 P.3d 281; 84 Cal.Rptr.3d 37; 2008 Cal.Lexis 11497 (September 24, 2008).

addition, *Vehicle Code* section 21455.5(c)(2)(C) requires a city to ensure that the "equipment" is correctly installed, calibrated, and working properly.

Vehicle Code section 21455.5(b) does not state that the warning notice program or public announcement must be implemented when each camera comes on line at a given intersection, but rather only before issuing tickets under this section. In addition, the reference in the code section to the "system" rather than the "equipment," as analyzed above, is a clear indication that the intent was to require the warning notices at the commencement of the overall automated traffic enforcement system.

By drawing a distinction between the "system" and "equipment" throughout the statutory scheme, it appears the Legislature intended the word "system" to refer to all the automated enforcement system "equipment" used by the governmental entity. This is consistent with generally accepted definitions of a "system" as "a regularly interacting or interdependent group of items forming a unified whole." See, Merriam-Webster's Collegiate Dictionary (10th ed. 1993) pg. 1194. This definition lends support for the position that "system" means the City's overall plan for the installation of red light cameras at designated intersections within its jurisdiction.

The court in *Park* references the same definition of "system," noting it is "a group of regularly interacting or interdependent items forming a unified whole." However, the court reaches the opposite conclusion and provides that cameras, which have all been installed by the same contractor and are currently operating in identical fashion, are not, together, a "system."[3]

The *Park* decision ignores the statutory language contained within the automated red light camera enforcement statutes, and the intent of the Legislature. It relies on legislative history with respect to railroad and rail transit grade crossing. There is no discussion of later amendments pertaining to red light camera enforcement. This incomplete review of the legislative history provides no definitive answer with respect to red light camera warning notices.

Further, the Senate Bill 780 Bill Analysis does not shed any light on this warning notice issue. It is not possible to determine if the rejection of any proposed language evidenced a legislative rejection of a link between the grace period and the installation of the city's first automated enforcement system, or alternatively, whether any proposed language was intended as a clarification of existing law which was rejected as unnecessary. Either way, this Legislative history is not dispositive.

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[3] Page 4, lines 15-25

The court's analysis expressly recognizes, but glosses over, the fact that the primary legislative intent for allowing the implementation of automated traffic enforcement systems is to deter red light violations.[4] Such intentions do not mandate the issuance of a public announcement and warning notices at each intersection. Rather, the issuance of a public announcement and warning notices at the implementation of the automated traffic enforcement system only, satisfies the Legislative intent.

The court's analysis also obscures the simple fact that there is nothing in the statutory language that implies the Legislature intended such multiple hearings and announcements, or intended to require the City to provide warning notices for 30 days at each intersection after installation of an automated enforcement system has commenced.

Accordingly, the *Park* decision is incorrectly decided, and should not be published.

II. Pending Case Before this Honorable Court May Preempt *Park* decision

Lastly, *In re Red Light Photo Enforcement Cases*, 193 P.3d 281; 84 Cal.Rptr.3d 37; 2008 Cal.Lexis 11497 (September 24, 2008), which is currently pending before this honorable Court, will address issues pertaining to red light camera enforcement. In this pending case, the California Supreme Court will analyze issues pertaining to the automated traffic enforcement system in the City of West Hollywood, which will affect all systems used throughout the state, including the system implemented by the City of Santa Ana. A ruling on this issue by the California Supreme Court will preempt any published opinion of the Appellate Division. Thus, the Appellate Division's order to publish the ruling in this case appears premature.

Conclusion:

In sum, the City of Santa Ana requests depublication of the *Park* opinion because it does not meet the standards for publication enunciated at Rule 8.1105, including, in particular, subsection (c)(3), (4) and (7).

While the *Park* decision may attempt to "modif[y], explain[], or criticize[]"[5] an existing rule of law, and advance a "new interpretation, clarification, criticism, or construction"[6] of a statute, it accomplishes nothing except muddying an already controversial and contradictory area of law because it incorrectly applies existing State law. It provides no "significant contribution to legal literature by reviewing either the

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[4] Page 6, Lines 6-10.
[5] California Rules of Court, Rule 8.1105(c)(3).
[6] California Rules of Court, Rule 8.1105(c)(4).

development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law."[7] As discussed above, the court's analysis is flawed. It ignores plain meaning and relies on intent that is not specifically concerned with the automated red light camera system, and on language rejected by the Legislature. Thus, it should not be certified for publication.

Based on the foregoing arguments, the City of Santa Ana respectfully requests that *People v. Park,* like *People v. Fischetti,* which dealt with the very issues addressed in *Park,* be depublished. Thank you for your consideration of this request.

Respectfully submitted,

JOSEPH W. FLETCHER
CITY ATTORNEY

Melissa Crosthwaite
Deputy City Attorney

MC/jmp
Attachments: A conformed copy of the Opinion as Exhibit 1; and
Proof of Service

[7] California Rules of Court, Rule 8.1105(c)(7).

CERTIFIED FOR PUBLICATION

APPELLATE DIVISION

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. DANNY BYONGUN PARK, Defendant and Appellant. CITY OF SANTA ANA, Amicus Curiae.	CASE NO. 30-2009-00329670 JUDGMENT ON APPEAL from the SUPERIOR COURT of ORANGE COUNTY CENTRAL JUSTICE CENTER HON. DANIEL M. ORNELAS COMMISSIONER

OPINION

LEWIS, J.

Based upon evidence obtained via an automated photographic enforcement system within the City of Santa Ana on February 17, 2009, appellant was convicted of failing to stop for a red signal in violation of Vehicle Code section 21453, subdivision (a). On appeal, as at trial, appellant contends that the citation was unlawfully issued and that the conviction is therefore invalid, because the People failed to demonstrate compliance with the warning requirements of Vehicle Code section 21455.5, subdivision (b).

Appearing as amicus curiae, the City of Santa Ana Police Department contends that the requirements of section 21455.5, subdivision (b) were satisfied by the issuance of warning notices six years earlier when the first photographic enforcement equipment was installed within the City's jurisdictional limits, and that no additional 30-day warning notice program was