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13 California

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

IN RE CITY OF SOUTH SAN FRANCISCO
RED LIGHT CAMERA CITATIONS
ISSUED FROM AUGUST 14, 2009 TO
JANUARY 27, 2010

OMNIBUS MOTION

CASE NO. –See Exhibit A to this Motion

**MOTION TO VACATE JUDGMENTS
AND DISMISSAL FOR CITATIONS
ISSUED UNDER CITY OF SOUTH SAN
FRANCISCO RED LIGHT CAMERA
PROGRAM**

Dept.: 24

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **TO VACATE JUDGMENT AND DISMISSAL**

3 The People of The State of California (the "People") hereby move this Court to vacate
4 judgments and enter dismissals for certain traffic citations which the City of South San Francisco
5 Police Department ("Department") issued under the City of South San Francisco's ("City") Red
6 Light Camera Enforcement Program ("Program"). The citations which are the subject of this
7 motion are set forth in Exhibit A to this Motion ("Exhibit A"). Exhibit A lists the citation number,
8 violation date and defendant's name for all citations issued under the Program from August 14,
9 2009 through January 27, 2010¹. The People seek to vacate judgments for certain citations that
10 were issued under the Program and dismiss the citations in furtherance of justice, pursuant to
11 Section 1385 of the California Penal Code.

12 This Motion will be and is based upon this Memorandum of Points and Authorities, the
13 Declaration of Bruce McPhillips filed concurrently herewith, the Request for Judicial Notice filed
14 concurrently herewith, Application to Seal Record for unredacted Exhibit A filed concurrently
15 herewith, and on the complete pleadings, files, and records of the underlying actions, and on any
16 evidence, oral and documentary, that may be presented at the hearing.

17 **BACKGROUND**

18 The City has instituted the Program at two intersections in the City, namely at the
19 intersections of El Camino Real and Westborough Boulevard/Chestnut Avenue, and El Camino
20 Real and Hickey Boulevard. (Declaration of Sergeant Bruce McPhillips (McPhillips Dec.), ¶ 3.)
21 The cameras installed under the Program record vehicles which fail to stop when the traffic signals
22 at those intersections turn red. (*Id.*) Failure to stop at a red light is a violation of Section 21453 of
23 the California Vehicle Code, and constitutes an infraction, pursuant to Section 40000.1 of the
24 California Vehicle Code. Cities are authorized to implement automated traffic enforcement

25 _____
26 ¹ The Exhibit A filed with this Motion has been redacted to remove each Defendant's mailing
27 address which is confidential information protected by law. The People have filed a unredacted
28 version of Exhibit A under seal with an accompanying Application to Seal Record concurrently
with this Motion.

1 programs like the Program pursuant to Section 21455.5 of the California Vehicle Code. A
2 government agency is permitted to enter into a contract with a manufacturer or supplier of
3 automated enforcement equipment. (Veh. Code §§ 21455.5 and 21455.6.) A city council must
4 authorize the city to enter into a contract for the use of an automated enforcement system. The
5 City entered into a contract with American Traffic Solutions, Inc (“ATS”) to provide an automated
6 enforcement system for red light violations on October 6, 2006 (“ATS Contract”). (McPhillips
7 Dec., ¶ 4.)

8 Governmental agencies implementing automated traffic enforcement programs under
9 Vehicle Code Section 21455.5 are required to conduct an initial period, under which they may
10 issue only warning notices. (Veh. Code §21455.5(b).) The testing phase of the City’s Program
11 began in late June, 2009. (McPhillips Dec., ¶ 5.) Beginning on July 15, 2009, vehicles which were
12 photographed failing to stop at a red light were not issued citations, but instead were issued
13 warning notices, which were issued for informational purposes only. (McPhillips Dec., ¶ 5.) The
14 issuance of warning notices continued for 30 days and concluded on August 13, 2009. (McPhillips
15 Dec., ¶ 5.)

16 Beginning on August 14, 2009, and continuing through January 27, 2010,
17 drivers/registered owners of vehicles which were photographed failing to stop at a red light were
18 issued citations under Vehicle Code Section 21453. (McPhillips Dec., ¶ 6.) Citations issued
19 under the Program were sent by mail to the address of record of the driver/registered owner of the
20 vehicle in question. (McPhillips Dec., ¶ 6.)

21 The City became aware of a procedural issue in its implementation of the Program. The
22 City determined that, due to City staff error, the ATS Contract was not specifically brought to the
23 City Council for ratification under Veh. Code § 21455.6. Instead, City staff relied on the general
24 direction given by the City Council at its July 19, 2006 special meeting and public hearing on the
25 Program to proceed with the Program with ATS as the contractor. (Request for Judicial Notice
26 filed concurrently herewith, Exhibit A.) On January 27, 2010, the City remedied this oversight by
27 City Council adoption of a resolution ratifying the ATS Contract during its public meeting. (*Id.*,
28 Exhibit B.)

1 The City has determined that the citations, issued for violations identified under the
2 Program, during the period starting on August 14, 2009, and running through January 27, 2010,
3 occurred before the ATS Contract was formally ratified by the City Council. The People request
4 vacation of convictions arising from any citations which were issued based upon violations
5 identified under the Program during the period from August 14, 2009, through January 27, 2010,
6 and dismissal of said citations in furtherance of justice.

7 **LEGAL ANALYSIS**

8 A court is authorized to vacate a judgment and dismissed the underlying charge under
9 Penal Code section 1385 "in furtherance of justice". In order to vacate convictions for citations
10 issued under the Program, the conviction must be set aside, the charge reinstated, a plea re-entered
11 of not guilty, and the charge dismissed. The People bring this motion with regard to citations
12 issued by the Department under the City's Program from August 14, 2010 to and including
13 January 27, 2010. The People request vacation of the judgments and dismissal of said citations in
14 furtherance of justice.

15 **REMEDY REQUESTED**

16 The Department has compiled, and submit in support of this Motion, a list of all citations,
17 identified by citation number, violation date and defendant's name, which were issued for
18 violations identified under the Program during the period from August 14, 2009 to and including
19 January 27, 2010. (Exhibit A to this Motion ("Exhibit A").²) The City and the Department are
20 informed and believe that there are citations listed on Exhibit A which have resulted in
21 convictions. The People by this Motion seek vacation of the convictions and judgments, and
22 dismissal of those citations listed in Exhibit A to this Motion which were issued during the time
23 period from August 14, 2009 through January 27, 2010 and have been:

- 24
 - Tried to conviction and judgment;

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26 ² Defendant's names entered to the right of the column marked "Transferred" contain corrected
27 names of the defendant which identify the person driving the car when the violation occurred
28 when the driver was not the registered owner.

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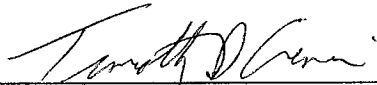
- Resolved by forfeiture of bail³; or
- Resulted in conviction based on a plea of guilty or no contest without attending traffic school⁴.

For each of said citations, the People, by this motion, seek a Court order:

- (1) to vacate and set aside the judgments, reinstate the charge, re-enter a plea of Not Guilty, and dismiss the citation;
- (2) that the fines and fees paid under said citation shall be refunded to the payor; and
- (3) that the People shall serve notice of the Court order by mail to the persons issued the citation and the Department of Motor Vehicles.

DATED: March 15, 2010

THE PEOPLE OF THE STATE OF CALIFORNIA

By: 
 Steven T. Mattas, City Attorney for the City of South San Francisco
 Timothy D. Cremin, Assistant City Attorney for the City of South San Francisco

1384457.7

³ A defendant may comply with a traffic citation by appearing personally or by counsel at the time and place specified, or by depositing the amount of bail set by schedule or the magistrate. (See Vehicle Code §40507.) When a defendant who has deposited bail fails to appear when the case is called for arraignment, the general practice is for the magistrate to declare the bail forfeited, and order that no further proceedings occur. Forfeiture of bail on a citation is equivalent to a conviction for proposes of infraction violations of the Vehicle Code. (Vehicle Code §1803(a)(2).)

⁴ Citations for violations identified under the Program during the period from August 14, 2009, to and including January 27, 2010, which have not yet resulted in dismissal or judgment and are currently pending before this Court are the subject of the People’s separate Motion to Dismiss, filed herewith.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

IN RE CITY OF SOUTH SAN FRANCISCO
RED LIGHT CAMERA CITATIONS
ISSUED FROM AUGUST 14, 2009 TO
JANUARY 27, 2010

OMNIBUS MOTION
CASE NO. . -See Exhibit A to this Motion
**MOTION TO DISMISS CITATIONS
ISSUED UNDER CITY OF SOUTH SAN
FRANCISCO RED LIGHT CAMERA
PROGRAM**
Dept.: 24

1 government agency is permitted to enter into a contract with a manufacturer or supplier of
2 automated enforcement equipment. (Veh. Code §§ 21455.5 and 21455.6.) A city council must
3 authorize the city to enter into a contract for the use of an automated enforcement system. The
4 City entered into a contract with American Traffic Solutions, Inc (“ATS”) to provide an automated
5 enforcement system for red light violations on October 6, 2006 (“ATS Contract”). (McPhillips
6 Dec., ¶ 4.)

7 Governmental agencies implementing automated traffic enforcement programs under
8 Vehicle Code Section 21455.5 are required to conduct an initial period, under which they may
9 issue only warning notices. (Veh. Code §21455.5(b).) The testing phase of the City’s Program
10 began in late June, 2009. (McPhillips Dec., ¶ 5.) Beginning on July 15, 2009, vehicles which were
11 photographed failing to stop at a red light were not issued citations, but instead were issued
12 warning notices, which were issued for informational purposes only. (McPhillips Dec., ¶ 5.) The
13 issuance of warning notices continued for 30 days and concluded on August 13, 2009. (McPhillips
14 Dec., ¶ 5.)

15 Beginning on August 14, 2009, and continuing through January 27, 2010,
16 drivers/registered owners of vehicles which were photographed failing to stop at a red light were
17 issued citations under Vehicle Code Section 21453. (McPhillips Dec., ¶ 6.) Citations issued
18 under the Program were sent by mail to the address of record of the driver/registered owner of the
19 vehicle in question. (McPhillips Dec., ¶ 6.)

20 The City became aware of a procedural issue regarding its implementation of the Program.
21 The City determined that, due to City staff error, the ATS Contract was not specifically brought to
22 the City Council for ratification under Veh. Code § 21455.6. Instead, City staff relied on the
23 general direction given by the City Council at its July 19, 2006 special meeting and public hearing
24 on the Program to proceed with the Program with ATS as the contractor. (Request for Judicial
25 Notice filed concurrently herewith, Exhibit A.) On January 27, 2010, the City remedied this
26 oversight by City Council adoption of a resolution ratifying the ATS Contract during its public
27 meeting. (*Id.*, Exhibit B.)

28 The City and Department have determined that the citations, issued for violations

1 identified under the Program, during the period starting on August 14, 2009, and running through
2 January 27, 2010, occurred before the ATS Contract was formally ratified by the City Council.
3 Therefore, the People request dismissal of all citations, pending before this Court, which were
4 issued based upon violations identified under the Program during the period from August 14, 2009
5 through January 27, 2010, in furtherance of justice.

6 **LEGAL ANALYSIS**

7 A court is authorized to order an action dismissed, either of its own motion or upon the
8 application of the prosecuting attorney, in "furtherance of justice." (Penal Code §1385(a).) A
9 court may dismiss a traffic-related infraction under Section 1385. (See *People ex rel. Dennis*
10 *Kottmeier v. Municipal Court* (1990) 220 Cal.App.3d 602, 607.) A case may be dismissed under
11 Section 1385 at any time before, during, or after trial. (*People v. Hatch* (2000) 22 Cal.4th 260
12 (dismissal after jury deadlocked and mistrial declared).) The People bring this motion with regard
13 to the citations issued by the Department under the City's Program from August 14, 2009 to and
14 including January 27, 2010. The People request dismissal of said citations in furtherance of
15 justice.

16 **REMEDY REQUESTED**

17 The Department has compiled, and submit in support of this motion, a list of all citations,
18 identified by citation number, violation date and defendant's name, which were issued for
19 violations identified under the Program during the period from August 14, 2009 to and including
20 January 27, 2010. (Exhibit A to this Motion ("Exhibit A").²) The City and the Department are
21 informed and believe that there are citations listed on Exhibit A which are currently pending
22 before this Court. The People, by this motion, seek a Court order dismissing those citations listed
23 in Exhibit A which were issued during the time period from August 14, 2009 through January 27,
24 2010 and are:

25 _____
26 ² Defendant's names entered to the right of the column marked "Transferred" contain corrected
27 names of the defendant which identify the person driving the car when the violation occurred
28 when the driver was not the registered owner.

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN MATEO**

13 IN RE CITY OF SOUTH SAN FRANCISCO
14 RED LIGHT CAMERA CITATIONS
ISSUED FROM AUGUST 14, 2009 TO
15 JANUARY 27, 2010

OMNIBUS MOTION
CASE NO. –See Exhibit A to the Motion to
Dismiss Filed Concurrently Herewith

**DECLARATION OF BRUCE
McPHILLIPS**

Department: 24

1 I, Bruce McPhillips, declare as follows:

2 1. I have personal knowledge of the following matters and could and would competently
3 testify if called upon to do so in a court of law.

4 2. I am a Sergeant with the City of South San Francisco Police Department ("SSF Police
5 Department"). From June 4, 2009 through January 2010, I was the Administrator of the City of
6 South San Francisco ("City") Red Light Camera Program ("Program").

7 3. The City has instituted the Program at two intersections in the City - the intersections
8 of El Camino Real and Westborough Boulevard, and El Camino Real and Hickey Boulevard. The
9 cameras installed under the Program record vehicles which fail to stop when the traffic signals at
10 those intersections turn red.

11 4. The City entered into a contract with American Traffic Solutions, Inc ("ATS") to
12 provide an automated enforcement system for red light violations on October 6, 2006 ("ATS
13 Contract").

14 5. The SSF Police Department issued a press release, dated June 26, 2009, announcing
15 the implementation of the Program and the initial issuance of warning notices. The testing phase
16 of the Program began in late June, 2009. Beginning on July 15, 2009, vehicles which were
17 photographed failing to stop at a red light were not issued citations, but instead were issued
18 warning notices for informational purposes only. The issuance of warning notices continued for a
19 30 day period and concluded on August 13, 2009.

20 6. Beginning on August 14, 2009 and continuing through January 27, 2010,
21 drivers/registered owners of vehicles which were photographed failing to stop at a red light were
22 issued citations under Vehicle Code Section 21453. Citations issued under the Program were sent
23 by mail to the address on record of the driver/registered owner of the vehicle in question.

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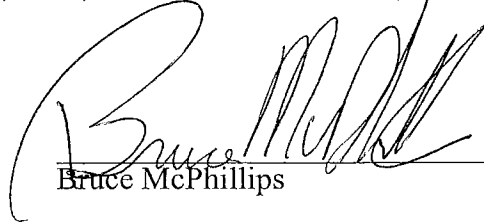
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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed this 11th day of March, 2010, at South San Francisco, California.

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6 Bruce McPhillips 97BM09

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