

Court of Appeal Case No. B229748
(Appellate Div. Case No. BR048012)
(Trial Court Case No. BI 20734)
(Citation No. BI20734)

**IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN**

People of the State of California, Plaintiff and Respondent,

v.

Annette Borzakian, Defendant and Appellant.

Appeal from the Appellate Division of the Superior Court for
Los Angeles County,
Justices Wasserman, Dymant and Kumar

**Appellant's Supplemental Brief Following Remand
From The Supreme Court of California**

Annette Borzakian, Esq. (224143)
9150 Wilshire Boulevard Suite 209
Beverly Hills, California 90212
Appellant and Attorney for Appellant

Caroline Castillo, Esq. (236987)
11500 W. Olympic Blvd. Suite 550
Los Angeles, California 90064
Attorney for the City of Beverly Hills

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9150 Wilshire Boulevard Suite 209
Beverly Hills, California 90212
Appellant and Attorney for Appellant

Caroline Castillo, Esq. (236987)
11500 W. Olympic Blvd. Suite 550
Los Angeles, California 90064
Attorney for the City of Beverly Hills

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ISSUE PRESENTED

The issue before this Court is whether to affirm its holding in *People v. Borzakian* (2013) 203 Cal.App.4th 525 (hereafter “*Borzakian*”) after the Supreme Court ruling in *People v. Goldsmith* (2014) 59 Cal.4th 258 (hereafter “*Goldsmith*”). Appellant respectfully answers yes on the basis that the facts in *Borzakian* are distinguishable from *Goldsmith*.

SUMMARY OF ARGUMENT

I.

THERE IS NO CONTRADICTORY LAW IN *GOLDSMITH* DISTURBING THE HOLDING IN *BORZAKIAN* THAT THE CITY OF BEVERLY HILLS FAILED TO ESTABLISH ITS BURDEN OF PROVING THAT THE MINIMUM YELLOW LIGHT INTERVAL MET THE REQUIREMENTS OF VEHICLE CODE SECTION 21455.7

In *Borzakian*, this Court found that Officer Butkus did not establish the requirement of Vehicle Code section 21455.7 of proving that the yellow light change interval at the intersection where the alleged offense occurred met the mandatory minimum yellow light change interval provided by the Department of Transportation.

In *Goldsmith*, the Court found that Officer Young did establish the requirement of Vehicle Code section 21455.7.

As discussed below, the facts in *Borzakian* are distinguishable from the facts in *Goldsmith* such that no reversal of this Court’s original holding is necessary.

Vehicle Code section 21455.7 subdivision (a) provides that “[A]t an intersection at which there is an automated enforcement system in operation, the minimum yellow light change interval shall be established in accordance with the Traffic Manual of the Department of Transportation.”

Vehicle Code section 21455.7 subdivision (b) provides that the minimum yellow light change intervals relating to designated approach speeds provided in the Traffic Manual of the Department of Transportation are *mandatory minimum yellow light intervals*.

Hence, the City of Beverly Hills (hereafter “City”) had the burden of proving that the yellow light change interval at the intersection where the alleged offense occurred, met the mandatory minimum yellow light change interval mandated by the Department of Transportation.

In *Goldsmith*, the Court found that the City of Los Angeles met its burden under Vehicle Code section 21455.7. In *Goldsmith*, Officer Young did not read off the data box on the photos and video as evidence of the yellow light change interval at the intersection, as did Officer Butkus in *Borzakian*. (*Goldsmith* at p. 265)

Rather, Officer Young stated that he had *personally visually inspected the traffic signal on a monthly basis to ensure* that the duration of the yellow light interval change complied with the mandatory minimum guidelines established by the California Department of Transportation. (*Goldsmith* at p. 265)

Officer Young further testified that on February 16, 2009, and March 16, 2009, he conducted timing checks of the signal at that exact intersection where the alleged violation occurred. He testified that his timing checks showed averages of 4.11 and 4.03 seconds, respectively. (*Goldsmith* at p. 265)

Officer Young testified that for that particular intersection, the yellow light change interval established by the Department of Transportation was 3.9 seconds. (*Goldsmith* at p. 265)

Specifically, at p. 265, the *Goldsmith* Court stated as follows:

“...Young testified that he visually inspected the traffic signal at this intersection and each of the other camera-enforced intersections on a monthly basis to ensure that the yellow phase timing complies with the minimum guidelines established by California's Department of Transportation. According to Young, on February 16, 2009, and March 16, 2009, he conducted timing checks of the signal at this intersection, which showed averages of 4.11 and 4.03 seconds, respectively. He testified that these test results were well above the 3.9 seconds established by the Department of Transportation for a 40-mile-an-hour zone..”
(Id at 265)

In stark contrast to the facts in *Goldsmith* where Officer Young personally inspected the traffic signal at issue, in *Borzakian*, Officer Butkus summarily read off the data box on the photos and video as evidence of the City's sole evidence regarding the yellow light change interval at the intersection. (CR-144)

The Court in *Borzakian* found that the State had not met its burden under Vehicle Code section 21455.7, noting that the record showed Officer Butkus determined the yellow light change interval from reading the data box on the photos and video. The Court in *Borzakian*, emphasized the fact that evidence was being presented to show the duration of the yellow traffic signal and that it met the minimum yellow light interval mandated by the

Legislature—measured to the hundredth of a second. The Court found that record did not support the conclusion of Officer Butkus that the representation he was making to the Court was accurate. Specifically, the Court of Appeal in *Borzakian* stated as follows:

“According to the record in this case, Officer Butkus ‘concluded that the light had been yellow for 3.15 seconds before it turned red which is legally sufficient when the speed limit is 25 miles per hour as it is at this intersection’ (and then red for .28 seconds before Borzakian entered the intersection) based on his review of the photographs and video from Redflex. (Original emphasis.) Even assuming a 3.15 second interval meets the mandatory minimum yellow light interval as mandated by the Legislature, according to Officer Butkus’s testimony then, he relied upon text typed across the top of two photos, stating ‘Amber: 3.15.’ **Accordingly, where the evidence was being presented to show the duration of the yellow traffic signal met the minimum interval mandated by the Legislature—measured to the hundredth of a second—the record does not support the conclusion Officer Butkus was ‘otherwise qualified to state that the representation [wa]s accurate.’** (People v. Bowley, *supra*, 59 Cal.2d at p. 862, 31 Cal.Rptr.

471, 382 P.2d 591.)” (*Id* at 785) (emphasis added)

As a background, the photographs (3) and video produced by Redflex Traffic Systems Incorporated admitted into evidence had a scoreboard-like box superimposed on each photograph containing writing which was used by Officer Butkus to testify. (Exhibit “1”) (also Respondent’s Trial exhibit “1”) Specifically, Officer Butkus used the information on the photographs to testify to the red light length, the yellow light length, the time elapsed between photos, the speed of the vehicle over the sensors and other information. (CR-144)

Officer Butkus did not do anything else *to ensure* that the duration of the yellow light interval as noted on the computer generated data box was accurate and complied with the minimum guidelines established by the California Department of Transportation *other than produce a document entitled Maintenance Job Statistics which the Borzakian Court found inadmissible.* (CR-144) (Exhibit “2”)

Officer Butkus in *Borzakian* did *not visually inspect the traffic signal on a monthly basis* to determine the yellow light interval at that intersection as did Officer Young in *Goldsmith*. There is no evidence that Officer Butkus ever visually inspected the traffic signal to determine the yellow light interval at that intersection. (CR-144)

Officer Butkus in *Borzakian* did not conduct any kind of timing check of the signal at that intersection nor did he testify as to what the averages were for the timing of the yellow light change intervals as Officer Young did in *Goldsmith*. (CR-144)

Officer Butkus in *Borzakian* did not testify as to what the yellow light change interval was for that particular intersection as established by

the Department of Transportation as did Officer Young in *Goldsmith*. (CR-144)

Officer Butkus did not ever testify that the yellow light interval on the data box was accurate. Nor that the camera determined the length of the yellow light interval. (CR-144)

Officer Butkus just stated that 3.15 seconds was legally sufficient when the speed limit was 25 miles per hour. (CR-144)

There is no testimony on the record or evidence that the data bar produced by Redflex Traffic Systems Incorporated accurately reflected the yellow light change interval at the intersection. (CR-144)

There is no testimony on the record regarding how the Redflex Traffic Systems' camera determined the yellow light change interval at the intersection. (CR-144)

In effect, at Appellant's trial, it was the Redflex Traffic Systems' camera, testifying regarding yellow light change interval at the intersection, but the words were being parroted by the City's witness, Officer Butkus.

The information certainly did not come from Officer Butkus *as he had no personal knowledge of the information he was testifying to.*

Counsel for the City, at the Court of Appeal, oral hearing in *Borzakian*, made an argument that finds absolutely no support in the record. Counsel argued that when the officer said that he determined the yellow light change interval at the intersection from the Redflex Traffic Systems' photos and video, the officer did not mean what he said. Rather, counsel tried to convince this Court that what the officer did was watch the video of the alleged violation in this case and he then timed the yellow light change interval as he watched the video of Appellant. Under this argument, had the

facts actually been true, Counsel for the City could have established some credibility for the officer's testimony regarding the yellow light interval in this case.

This however, was never testified to by Officer Butkus in *Borzakian*. Counsel for the City would have this Court believe that even though Officer Butkus never said so:

- a) That Officer Butkus had, in his possession, and actually used a stop watch which measured time to the nearest hundredth of a second;
- b) That Officer Butkus logged onto the Redflex Traffic Systems' website to retrieve the video of the alleged violation of Appellant in this case to time how long it took for the yellow light to change to red;
- c) That he started his watch clock the second he viewed the light at this particular intersection turne yellow on the video;
- d) That he waited and counted the seconds, down to the hundredth of a second, until the light went from yellow to red;
- e) Then, when the light turned red, he turned off his watch clock;
- f) Then, he recorded the time from his watch clock somewhere so he could remember it for his testimony should it have become necessary;

There is nothing in the trial record which support Counsel's version of what he claims occurred. Furthermore, there was no testimony establishing that the video stream that Officer Butkus watched was

produced to him by Redflex in real time, to make it possible to accurately measure the yellow light interval change. (CR-144)

The fact is, Officer Butkus relied on the printed information contained in the data box which was generated by the Redflex Traffic Systems Inc's camera. (CR-144) (Exhibit "1") Officer Butkus did nothing to ensure that the information he testified to was correct other than to bring with him to Court a document self-entitled Maintenance Job Statistics - Details. (Exhibit "2")(Respondent's trial Exhibit "1")

Given the fact that the Court in *Goldsmith* held that Redflex Traffic Systems Inc's photographs and video may be admitted into evidence without a the necessity of establishing the accuracy of the images, it is imperative that the City not be permitted to rely solely on the data bar as its sole proof of the yellow light interval without first establishing the accuracy of the information contained in the data bar.

The Court in *Goldsmith* explained that authentication only requires a finding, that the printed versions of ATES images and data are accurate representations of the images and data stored in the ATES equipment. Specifically, *Goldsmith* explained, that the presumptions *essentially operate to establish that 'a computer's print function has worked properly.*

The Court in *Goldsmith* also found that this does not mean the *images and data are accurate as a matter of law when having to prove a fact in a case where guilt must be established beyond a reasonable doubt.* Rather that the images and data reflect what is on the ATES equipment.

“Because sections 1552 and 1553 provide a presumption for both ‘the existence and content’ of computer information and digital images that the printed versions purport to represent (§§

1552, subd. (a), 1553, subd. (a)), the presumptions operate to establish, at least preliminarily, that errors in content have not been introduced in the course of printing the images and accompanying data. As the court in *People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1450, 121 Cal.Rptr.2d 627 (Hawkins) explained, the presumptions essentially operate to establish that ‘a computer's print function has worked properly.’ As applicable here, the presumptions provided by sections 1552 and 1553 support a finding, in the absence of contrary evidence, that the printed versions of ATES images and data are accurate representations of the images and data stored in the ATES equipment.” (*Id* at p. 269)

Unlike *Goldsmith*, in *Borzakian* there was no admissible, competent evidence that the information contained in the data bar was *accurate*. The Evidence Code presumptions only aided the City in getting the video and photos entered into evidence over a foundation objection. The presumptions providing that the computer's print function had worked properly, does nothing to prove that the camera accurately recorded the yellow light change interval. In *Borzakian*, the Court stated:

“In this case, ...the only evidence presented to show the Redflex automated traffic enforcement system was working properly (and inspected regularly and properly calibrated) was the

maintenance log prepared by a Redflex employee.” (*Borzakian* at p. 787)

The *Borzakian* Court went on to find that the Redflex document self-entitled Maintenance Job Statistics - Details prepared by Mr. Tafoya of Redflex Traffic Systems Inc. was inadmissible hearsay. (Please see section II below)

II.

THERE IS NO CONTRADICTORY LAW IN *GOLDSMITH* DISTURBING THE HOLDING IN *BORZAKIAN* THAT THE REDFLEX MAINTENANCE RECORD PREPARED BY FERNANDO TAFOYA WAS HEARSAY

In *Borzakian*, the trial court admitted a three-page document prepared by Fernando Tafoya, a Redflex employee, setting forth the work he allegedly performed on the camera which allegedly was the camera used to produce the photos and video in this case. This document is self-entitled Maintenance Job Statistics - Details. (Exhibit “2”)(Respondent’s Trial Exhibit “1”)

This document, hereafter referred to as Mr. Tafoya’s Maintenance Job Statistics, was not a computer-generated document. Rather it was a document that was prepared by a human being by the name of Fernando Tafoya attesting to the work that he allegedly performed on a camera and presented to the Court to prove that the camera was working at the date and time of the alleged violation. (Respondent’s Exhibit #1 at trial)

Although Mr. Tafoya’s Maintenance Job Statistics was not computer generated as were the photos and video, nevertheless Mr. Tafoya’s Maintenance Job Statistics was admitted into evidence over Appellant’s

objection based upon lack of foundation, hearsay and Sixth Amendment Confrontation objections.

The Court in *Borzakian* reversed the trial court and held that Mr. Tafoya's Maintenance Job Statistics was hearsay. This Court further held that the City had not established an exception to the hearsay objection. The Court stated as follows:

“In this case, Borzakian objected, but the only evidence presented to show the Redflex automated traffic enforcement system was working properly (and inspected regularly and properly calibrated) was the maintenance log prepared by a Redflex employee. In the People's view, the “data text” on the photographs and the maintenance log were admissible under Evidence Code section 1271 (the business records exception to the hearsay rule). According to the People, all of the documents presented at trial, including the photographs, video and maintenance logs “were prepared in the ordinary course of business of the BHPD,” and Officer Butkus was qualified to authenticate the evidence as business records. (Italics added.) We disagree. Again, the City of Beverly Hills elected to contract out certain aspects of its operation of an automated enforcement system to Redflex.¹⁰ Further, Evidence Code section 1271 “ ‘requires a witness to testify as to the identity of the

record and its mode of preparation in every instance.’ ” (String citation omitted.) There is nothing in this record to support the conclusion that Officer Butkus described the mode of preparation of the maintenance logs in any respect or that the sources of information and method and time of preparation were such as to indicate trustworthiness. **Without the proper testimony, the maintenance logs (and therefore the photographs with text typed across the top) were not properly admitted.** (String citation omitted.) Without these documents, as in Khaled, there is a “total lack of evidence to support the Vehicle Code violation in question.”¹¹(Khaled, supra, 186 Cal.App.4th Supp. at p. 8, 113 Cal.Rptr.3d 796.) (*Borzakian* at p. 787)(emphasis added)

There is no contradictory law in *Goldsmith* disturbing the holding in *Borzakian* that Mr. Tafoya’s Maintenance Job Statistics was inadmissible.

In the *Goldsmith* opinion (as distinguished from *Borzakian*), there is no discussion as to the City of Los Angeles submitting any maintenance records created by Redflex’s employees into evidence. In *Goldsmith*, the evidence consisted of “...several photographs and a 12-second video.” (*Id* at p. 262) *Goldsmith* (as distinguished from *Borzakian*) does not contain any objection by Appellant to any maintenance record for the camera(s), as no maintenance record was admitted into evidence. *Goldsmith* (as distinguished from *Borzakian*) does not contain testimony from the officer regarding maintenance and certification, of the equipment.

Specifically, the *Goldsmith* Court stated the following:

“Young was not asked anything about the city's or the police department's records or supervision of Redflex's maintenance or certification of the equipment.” (*Id* at p. 248)

However, *Goldsmith* stated that the Appellant objected to the authentication of the digital images claiming that as a part of authentication it was the State's burden to present the testimony of a Redflex technician regarding the operation and maintenance of the system that generated the ATES evidence because digital images are more readily and inexpensively subject to manipulation, and yet at the same time, such manipulations are more difficult to detect, compared with an analog alteration. (See *Goldsmith*, at p. 248)

In response to Appellant's argument regarding authentication and the necessity of a witness familiar with the operation and maintenance of the system, the *Goldsmith* Court found that the testimony of a Redflex technician or other witness with special expertise in the operation and maintenance of the ATES computers was not required as a *prerequisite for authentication* of the ATES evidence. (See *Goldsmith*, at p. 248) The only ATES evidence before the court were photos and video.

In contrast to *Goldsmith*, in *Borzakian*:

- (1) The City offered Mr. Tafoya's Maintenance Job Statistics into evidence to prove that the camera was working at the date and time of the alleged crime; (Respondent's Exhibit #2)

- (2) Appellant objected to Mr. Tafoya's Maintenance Job Statistics based on *lack of foundation, hearsay and violation of 6th Amendment Right of Confrontation*; (CR-144)
- (3) The trial court admitted Mr. Tafoya's Maintenance Job Statistics prepared by Fernando Tafoya over Appellant's objections and Motion In Limine to Exclude this documents based on the same objections; (CR-144)
- (4) The Court of Appeal in *Borzakian* held that Mr. Tafoya's Maintenance Job Statistics prepared by Fernando Tafoya was inadmissible hearsay. (*Borzakian* at p. 796)

In contrast to *Goldsmith*, the Court in *Borzakian* ruled on the admissibility of the Mr. Tafoya's Maintenance Job Statistics over Appellant's hearsay objection. There was no such ruling in *Goldsmith*. (See *Borzakian*, at p. 787) The doctrine of stare decisis does not extend to points not expressly considered and decided by the court. "An opinion is not authority for a point not raised, considered, or resolved therein." *Styne v. Stevens* (2001) 26 C4th 42.

The Court did not issue a ruling regarding Appellant's Sixth Amendment Confrontation objection as set forth below in section V.

III.

REDFLEX'S "SUCCESSFUL EFFORT TO SUPPORT" THE PASSAGE OF SB 1303, HAS DONE NOTHING TO UPSET THIS COURT'S HOLDING WITH RESPECT TO THE INADMISSIBILITY OF TAFOYA'S RECORD OR FAILURE OF THE CITY TO MEET ITS BURDEN OF ESTABLISHING THE YELLOW LIGHT CHANGE INTERVAL

Redflex's involvement with the passage of California's Senate Bill 1303 is outside the scope of this brief. However, the effect of the passage of this bill is not.

In a memo sent to its customers, Redflex Traffic Systems Inc. touts its successful efforts to pass SB 1303, which it claims: 1) Legislatively overrules the Published Opinion in *People v. Borzakian*; and 2) Insures that the admission of ATES-generated evidence no longer requires an initial showing that the system is reliable. (Exhibit "3") The memo states as follows:

"This memo discusses the impact of the industries' successful efforts to support Senate Bill No. 1303, which was enacted on September 28, 2012."

"SB 1303 essentially legislatively overrules *Borzakian*."

The Redflex Traffic Systems Inc. memo cites the changes SB 1303 makes to California Evidence Code sections 1552 and 1553 and states the following:

"These amendments should undermine the arguments that the admission of ATES-generated evidence requires an initial showing that the system is reliable."

Redflex Traffic Systems Inc. succeeded in the passage of SB 1303, which sought to ensure that automated red light ticket prosecutions became defenseless.

According to the Federal Bureau of Investigations bulletin dated August 13, 2014, the grand jury returned a 23-count indictment alleging that Redflex officials provided personal benefits to Chicago officials in exchange for providing inside information in assisting Redflex in obtaining, keeping, and expanding its Chicago contracts that grew to \$124,000,000. A copy of the Federal indictment is available online for review.

As detailed below, Redflex Traffic Systems Inc's efforts to alter California law for the purpose of maximizing their profits, has done nothing requiring a reversal of this Court's original decision.

SB 1303, while making photographs and video admissible in photo enforcement cases, without the necessity of having to establish reliable authentication for the computer-generated data produced by Redflex Traffic Systems Inc.'s machines, has done nothing to:

- 1) Upset this Court's holding that Officer Butkus did not establish the City's burden to prove that the yellow light interval met the requirements of the Department of Transportation; nor
- 2) Upset this Court's holding that Mr. Tafoya's Maintenance Job Statistics was inadmissible hearsay.

The changes made by SB 1303 effected Evidence Code sections 1552, 1553 and Vehicle Code section 21455.5(e).

Evidence Code sections 1552 provides as follows:

- “(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent.
- (b) Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system.”

Here, Mr. Tafoya’s Maintenance Job Statistics is not a printed representation of computer information or a computer program.” Nor is it the printed representation of computer-generated information stored by an automated traffic enforcement system. Rather, it is a document prepared by a human being regarding the work he allegedly performed on a camera. Thus Evidence Code section 1552 does not apply.

As for the printed information on the data bar which states “Amber.3:15,” this is ink on the paper which according to Evidence Code section 1552 raises the rebuttable presumption that the camera’s print function contained the information: “Amber.3:15.” That is all. The Court in *Goldsmith* explained that the presumptions *essentially operate to establish that ‘a computer’s print function has worked properly.*

According to *Goldsmith* , this presumption does not stand to mean that the *images and data are accurate as a matter of law when having to prove a fact in a case where guilt must be established beyond a reasonable doubt.* Rather that the images and data reflect what is on the ATES equipment.

Evidence Code section 1553 provides as follows:

“(a) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

(b) Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system.”

Here, the Mr. Tafoya’s Maintenance Job Statistics is not a ‘printed representation of images stored on a video or digital medium’ or a ‘the printed representation of video or photographic images stored by an automated traffic enforcement system’. Rather, it is a document prepared by a human being regarding the work he allegedly performed on a camera. Thus Evidence Code section 1553 does not apply.

California Vehicle Code section 21455.5(e) provides as follows:

“[T]he printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant under Division 10 (commencing with Section 1200) of the Evidence Code.”

Here, Mr. Tafoya’s Maintenance Job Statistics is not a ‘printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system.’ Thus California Vehicle Code section 21455.5(e) does not apply.

The Borzakian Court after reviewing the Mr. Tafoya's Maintenance Job Statistics found that it was not a printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system.

"...People's Exhibit 1 includes a document entitled "Maintenance Job Statistics—Details" bearing a logo and the name "Redflex Traffic Systems, Inc." followed by a two-page form (with no company or entity identified) entitled "Monthly Preventative Maintenance (PM) Inspection." 9 The "Maintenance Job Statistics—Details" page states "ROUTINE" work orders were completed on May 27, 2009 and June 23, 2009, with the same information reported for both dates: "Routine proactive maintenance for this approach. All physical, hardware, and software systems operational per RTS specifications and Routine Maintenance Program. Performed following Checks, Physical Check (Verified structure, glass cleaned, area free of debris, foundation seals, equipment clean, enclosures secure) Communication Check (Router, modem, and communication link in working order) Secure Continuity (All loop grounding is secure and within specification) Voltage Levels (All incoming voltage levels are within specification and foreign voltage does not exist) System Check

(Next Images, defrag hard-drives, SDCM comms, video and phasing fully operational) Valid Certification. Tech. Fernando Tafoya.” However, the words “Physical Check,” “Communication Check,” “Voltage Levels,” “System Check,” and “Valid Certification. Tech.” are underlined by hand on the earlier entry but not on the later one. In addition, the first entry identifies the start time as “1:15:00 PM” and the end time as “1:45:00 PM” for “total hours worked: 0.50,” and the start and end times are underlined by hand for the first entry but not the second. Under the heading “Issues Explained,” the first entry is described as “Certificate of Inspection and Operation: May 2009,” and the second is “Certificate of Inspection and Operation: June 2009.” Both bear entries bear the same apparent signature next to the words “WORK ORDER ASSIGNED TO: FTAFOYA.”

With respect to the two-page “Monthly Preventative Maintenance (PM) Inspection” checklist, numerous tasks are listed under headings for the “Face Camera,” “Main Camera,” “RTS Cabinet” and “Associated Equipment,” all with the sidebar “Physical Inspection.” Similar headings for “Face Camera,” “Main Camera,” and “Associated

Equipment,” accompany a second sidebar for “Configuration/Operational Inspection.” Although the tasks are listed in a checklist format with open boxes next to each task, there are no marks in any of the boxes. However, there are handwritten asterisks noted on both pages: one on the first page, under the “Physical Inspection” “RTS Cabinet” heading, beside the words: “Ensure all electrical connections are tight and free from corrosion, repair as required.” (Italics added.) On the second page, under the “Configuration/Operational Inspection” “Main Camera” heading, there are two asterisks next to the following tasks: “Defrag and error check face computer (if applicable), annotate any errors that cannot be resolved,” “Ensure current date/time settings for the camera being checked are accurate, pay particular attention to time zone,” and “Ensure that camera being checked has a valid certificate that is not due to expire within the next 60 days, reissue certificate as necessary, annotate records if updates are made.” (*Borzakian* at p. 783)

The Court in *Borzakian*, found that Mr. Tafoya’s Maintenance Job Statistics was hearsay. (Please see section II below)

Furthermore, the Court in *Borzakian* ultimately found that the record contained no evidence presented to establish the Business Records exception to the hearsay rule, as on the record, Officer Butkus did not

describe the mode of preparation of the Mr. Tafoya's Maintenance Job Statistics in any respect or that the sources of information and method and time of preparation were such as to indicate trustworthiness.

Appellant asked and was permitted by the court to question Officer Butkus, on *voir dire*, regarding his lack of qualification to lay the foundation for Mr. Tafoya's Maintenance Job Statistics. (CR-143 and CR-144). Officer Butkus could not answer any of the questions posed to him in that regard.

IV.

EVEN IF ADMISSIBLE, MR. TAFOYA'S MAINTENANCE LOG WAS NOT EVIDENCE THAT THE CAMERA WAS WORKING PROPERLY ON THE DATE AND TIME OF THE ALLEGED VIOLATION

a) Mr. Tafoya's Maintenance Job Statistics contained cut and paste information which did not indicate that the particular camera at the intersection was working properly on the date and time of the alleged violation.

b) The Officer's testimony that the cameras were working properly on the date and time of the Appellant's alleged violation was speculation, as he was not qualified to give that opinion under the rules applicable to expert opinions nor did he have personal knowledge of the matter about which he testified. Furthermore, the Officer's opinion could not have been established from Mr. Tafoya's Maintenance Job Statistics.

"Officer Butkus ... testified that he reviewed the technicians' logs and that the cameras were working properly *on the date at the time of Appellant's alleged violation.*" (CR-144)) [Emphasis added]

Officer Butkus' testimony was solely based on Mr. Tafoya's Maintenance Job Statistics (Respondent's Exhibit "1").

No inspection was done on the date of the violation. There was no testimony from Officer Butkus establishing his qualification to testify as an expert for his opinion that the cameras were working properly nor for his opinion that the cameras were working properly on the date and time of the alleged violation.

In fact, during *voir dire*, Officer Butkus admitted that the company who prepared the Job Maintenance Sheet, the sheet containing the description of the maintenance and the party responsible for maintaining the equipment which caused the photographs and video to be recorded, was a company by the name of RedFlex Traffic Systems.

Officer Butkus did not perform the maintenance nor was he present when it was done. Officer Butkus, while admitting that he was required to prove, as his case in chief, that necessary elements of the charge required that the equipment be regularly inspected, correctly installed and calibrated, and operating properly, failed to do so.

By his own admission, his testimony was solely based on the maintenance log that was prepared by RedFlex. He did not know who the custodian of records was for RedFlex. Furthermore, the log did not show any proof of calibration. (CR-143 and CR-144)

Pursuant to Vehicle Code section 21455.5(c)(2)(B) and (C): "Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system. As used in this subdivision, 'operate' includes all of the following activities: ...(2) Performing administrative functions and day-to-day functions, including, but not limited to, all of the following:.(B) Ensuring that the equipment is

regularly inspected. (Page 3) (C) Certifying that the equipment is properly installed and calibrated, and is operating properly.” (Emphasis added)

The Respondent’s sole witness, an Officer who is not the custodian of records for the automated enforcement system, could not provide the necessary evidence to prove the necessary elements of Vehicle Code section 21455.5(c)(2)(B) and (c).

California Evidence Code section 702(a) provides that “[S]ubject to Section 801, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter.” Here, Officer Butkus had no personal knowledge of the matters to which he testified.

c) The camera was not inspected regularly or calibrated as required pursuant to Vehicle Code section 21455.5.

Mr. Tafoya’s Maintenance Job Statistics does not show that the camera was ever calibrated nor does it prove that the equipment was installed properly or regularly inspected.

V.

APPELLANT’S CONSTITUTIONAL RIGHT OF CONFRONTATION WAS VIOLATED WHEN THE TRIAL COURT ADMITTED THE REDFLEX MAINTENANCE RECORD PREPARED BY FERNANDO TAFOYA OVER HER OBJECTION

The Borzakian Court did not issue a ruling regarding Appellant’s Sixth Amendment Confrontational objection. Appellant respectfully requests that the Court issue an Opinion regarding Appellant’s objection to Mr. Tafoya’s Maintenance Job Statistics based on her objection that the

admission of this evidence violated her Constitutional Right of Confrontation.

This document was not a computer-generated document. It was a document prepared by a human being attesting to some fact admitted by the trial court to prove that the camera/computer was working properly at the date and time of the violation.

In Footnote 11, the Borzakian Court, states:

“In light of our resolution of the issues surrounding the admissibility of the Redflex evidence, we need not reach Borzakian's arguments relating to her constitutional right of confrontation. We note, however, the Redflex evidence necessarily has a “ ‘primary purpose’ ” of “ ‘establish[ing] or prov[ing] past events potentially relevant to later criminal prosecution.’ ” (Bullcoming v. New Mexico (2011) —U.S. —, 131 S.Ct. 2705, 2714, 2717, fn. 6, 180 L.Ed.2d 610, citation omitted [“A document created solely for an ‘evidentiary purpose,’ ..., made in aid of a police investigation, ranks as testimonial.”]) “Suppose a police report recorded an objective fact—Bullcoming's counsel posited the address above the front door of a house or the read-out of a radar gun. [Citation.] Could an officer other than the one who saw the number on the house or gun present the information in court—so long as that officer was equipped to testify about any technology the observing officer deployed and the police department's standard operating procedures? As our precedent makes plain, the answer is emphatically ‘No.’ ” (Id. at pp. 2714–2715, citation omitted.) “The Clause does not tolerate dispensing with confrontation simply because the court believes that questioning one witness about another's testimonial statements provides a fair enough opportunity for cross-examination.... When the State elected to introduce Caylor's certification, Caylor became a witness Bullcoming had the right to confront.” (Id. at p. 2716.) Further, it bears mention that the “ ‘Confrontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court.’ ” (Bullcoming, supra, 131 S.Ct. at p. 2719, citation omitted.)”

At the conclusion of Officer Butkus' *voir dire*, it was apparent that the officer had no personal knowledge of the accuracy, maintenance and condition of the camera which produced the photographs, video, and the information contained therein. As a result, he had no personal knowledge of the maintenance and accuracy record of the camera that produced the photographs and video nor could he testify to the accuracy of the information contained on the photograph and video - namely the number of seconds the light had been yellow before it turned red (Vehicle Code section 21455.7).

This witness' testimony regarding the accuracy of the camera/video was, therefore, not based on his personal knowledge. The Sixth Amendment to the United States Constitution, as incorporated through the 14th Amendment to the Constitution, states that "in all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him. . ." These rights include the right to reasonable cross examination of these witnesses.

Here, the Respondent produced no human being that could properly testify to first-hand knowledge of the incident in question or the accuracy of, and the foundation for the photo(s), video and maintenance log intended as prima facie evidence. Nor did Respondent produce a traffic Officer who contemporaneously observed the offense in question.

In this case, no human being with personal knowledge appeared to testify as to the accuracy of the figures imprinted on the data box. Moreover, as held by the United States Supreme Court in *Bullcoming*, "Confrontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court." (*Bullcoming*, supra, 131 S.Ct. At p. 2719, citation omitted.)"

Without the opportunity to cross-examine a human being who has personal knowledge, there is no way to determine whether the system was functioning properly and why and how the data box contains the information which is present.

VI.

IN THE ABSENCE OF AN ADEQUATE RECORD ON APPEAL, FEDERAL DUE PROCESS PRINCIPLES REQUIRE REVERSAL OF APPELLANT'S CONVICTION

As the California Supreme Court confirmed recently in *Steen v. Appellate Division* (2014) 59 Cal. 4th 1045, “[d]ue process of law requires that criminal prosecutions be instituted through the regular processes of law.” *Id.* at 1056 (internal citation omitted). That includes the requirement to enable the parties to create or obtain a record for Appellate review.

Here, the *Borzakian* Court noted the efforts Appellant made to include a detailed summary of the evidence at her trial in the record on appeal, as well as the limitations imposed by the statement as certified. (*Borzakian* at p. 678)

By erroneously precluding Appellant from creating a record for the appeal, the Commissioner violated Appellant’s constitutional rights. State procedural rules may not be applied in a manner that offends the Due Process Clause. See *Medina v. California* (1992) 505 U.S. 437, 448 (the Due Process Clause prohibits states from regulating criminal procedure in ways that contravene any “recognized principle of fundamental fairness in operation”) (internal quotation marks omitted); *Evitts v. Lucey* (1985) 469 U.S. 387, 393 (“the procedures used in deciding appeals must comport with the demands of the Due Process [Clause]”); *Davis v. Wechsler* (1923) 263 U.S. 22, 24 (Holmes, J.) (“[w]hatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of

federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice”).

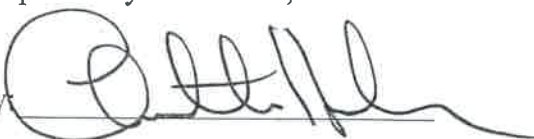
CONCLUSION

It is undisputed that modern machines are a marvel. However, no machine has ever been created that can convict a human being of a crime, that is, until now. At the helm of this empire sits a private enterprise, Redflex Traffic Systems Incorporated. Thriving in its hundred million dollar industry. Wielding its power and influence in this State.

This Court with its ruling, can instill public confidence by finding that the commercial products produced by Redflex will not result in the public’s defenseless prosecutions and a denial of their Sixth Amendment Right to cross-examine a human being.

Dated: October 7, 2014

Respectfully submitted,

By: 

Annette Borzakian, Esq.

Certificate of Compliance

The attached Petition was produced using 13-point Times New Roman Numeral type style and contains 6,534 words not including the table of contents and authorities, caption page, or this certification page, as counted by the word processing program used to generate it and does not exceed 50 pages.

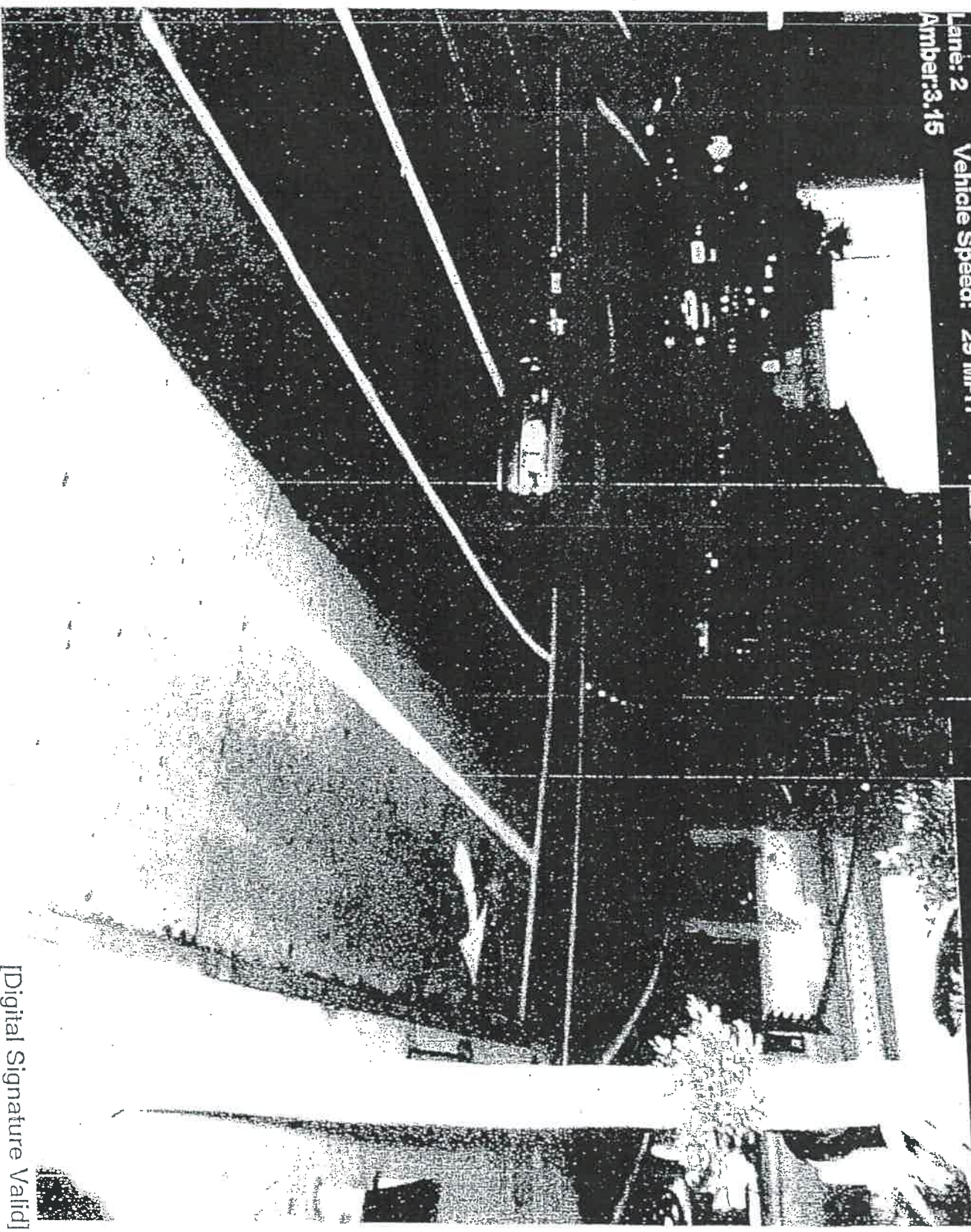
Dated: October 8, 2014

By:  _____

Annette Borzakian, Esq.

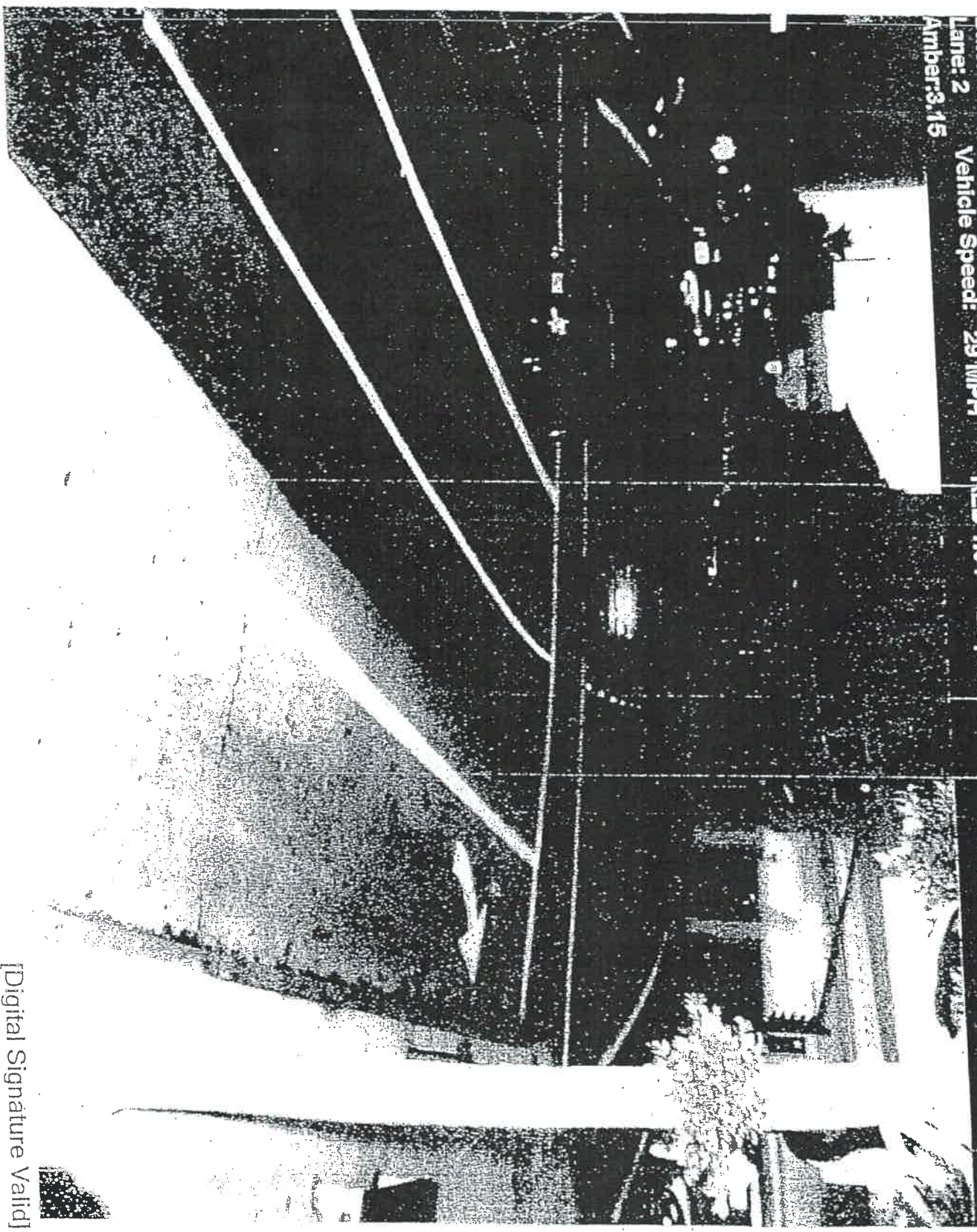
EXHIBIT "1"

Location: BEH-BEW-01 W/B Beverly and Wilshire, Beverly Hills, CA (BEH-BEW-01_Video) 7
Date: Wednesday 03 June 2009 Time: 19:08:44 Frame: 50 SpeedLimit: 25 MPH
Lane: 2 Vehicle Speed: 29 MPH RED 0.28 Elapsed Time: 0.00
Amber:3.15



[Digital Signature Valid]

Location: BEH-BEWI-01 N/B Beverly and Wilshire, Beverly Hills, CA (BEH-BEWI-01 14:5:30)
Date: Wednesday 03 June 2009 Time: 19:08:45 Frame: 50 SpeedLimit: 25 MPH
Lane: 2 Vehicle Speed: 29 MPH PED 1.04 Elapsed Time: 0.75
Amber: 3.15

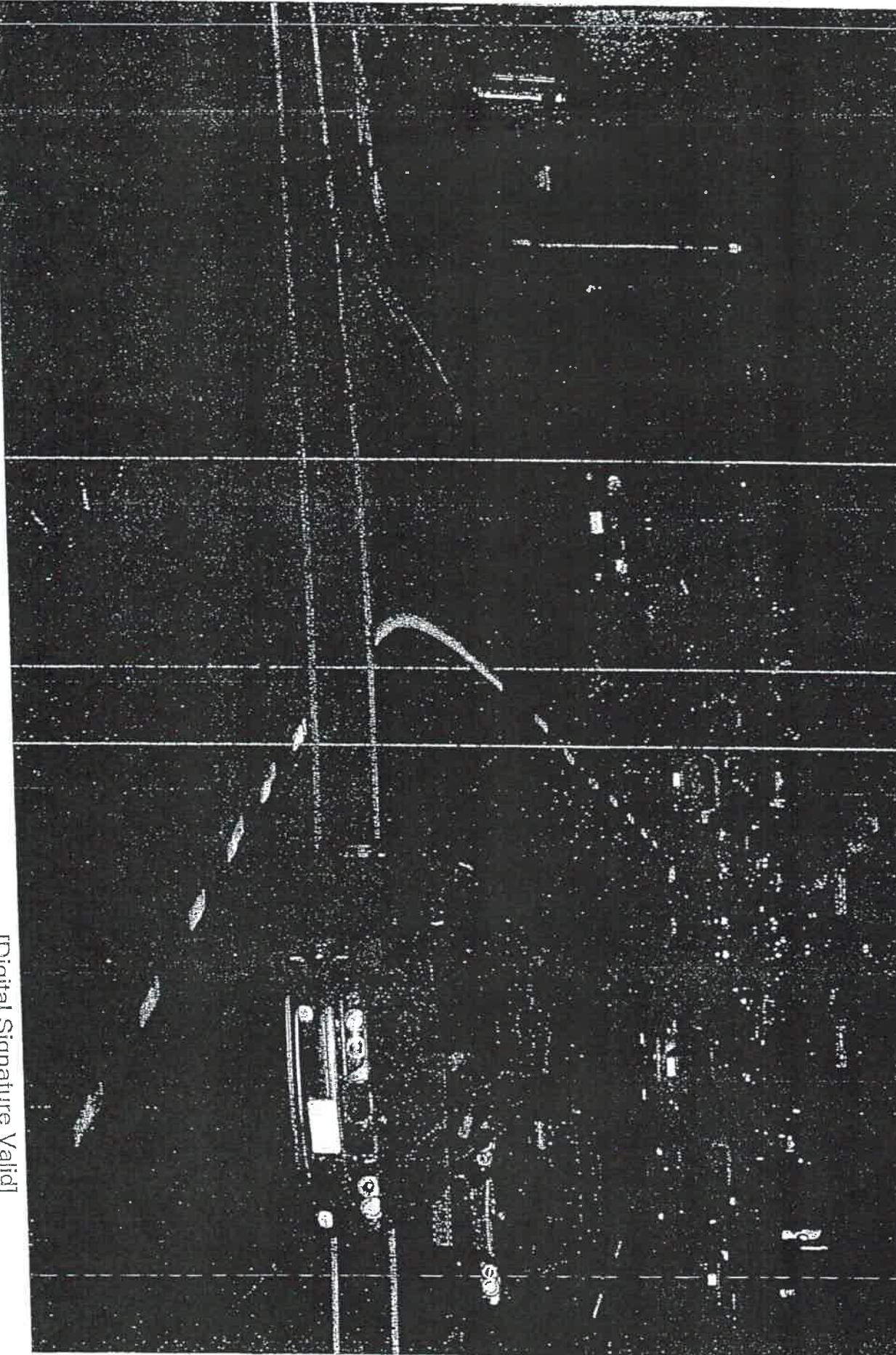


[Digital Signature Valid]

Location: BEH-BEWI-01 N/B Beverly and Wilshire, Beverly Hills, CA (BEH-BEWI-01 V4.9.30.0)

Date: Wednesday 03 June 2009 Time: 19:08:45 Frame: 50 SpeedLimit: 25 MPH

Lane: 2 Vehicle Speed: 29 MPH RED : 0.94 Elapsed Time: 0.65



[Digital Signature Valid]

EXHIBIT "2"



Maintenance Job Statistics - Details

1/14/2010

Begin Date: 05/03/2009

End Date: 07/03/2009

Filtered by: Close Date

Work Order Id	Approach	Open Date Mantis/ Maint	Close Date	Technician	Priority	Issue	Issue Explained
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Beverly Hills

2.65423	BEH-BEWI-01	N/A 05/29/2009	05/27/2009	FERNANDO TAFOYA	ROUTINE	OPS CHECK	Certificate of Inspection and Operation: May 2009
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Work Performed Status: COMPLETED

1. Routine proactive maintenance for this approach. All physical, hardware, and software systems operational per RTS specifications and Routine Maintenance Program. Performed following Checks, Physical Check (Verified structure, glass cleaned, area free of debris, foundation seals, equipment clean, enclosures secure) Communication Check (Router, modem, and communication link in working order) Secure Continuity (All loop grounding is secure and within specification) Voltage Levels (All incoming voltage levels are within specification and foreign voltage does not exist) System Check (Next Images, defrag hard-drives, SDCM comms, video, and phasing fully operational) Valid Certification. Tech. Fernando Tafoya

HOURS WORKED: 0.50

REPORTED BY: FTAFOYA

START DATE: 5/27/2009 1:15.00 PM

END DATE: 5/27/2009 1:45.00 PM

WORK ORDER ASSIGNED TO: FTAFOYA

270096	BEH-BEWI-01	N/A 06/30/2009	06/23/2009	FERNANDO TAFOYA	ROUTINE	OPS CHECK	Certificate of Inspection and Operation: June 2009
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Work Performed Status: COMPLETED

1. Routine proactive maintenance for this approach. All physical, hardware, and software systems operational per RTS specifications and Routine Maintenance Program. Performed following Checks, Physical Check (Verified structure, glass cleaned, area free of debris, foundation seals, equipment clean, enclosures secure) Communication Check (Router, modem, and communication link in working order) Secure Continuity (All loop grounding is secure and within specification) Voltage Levels (All incoming voltage levels are within specification and foreign voltage does not exist) System Check (Next Images, defrag hard-drives, SDCM comms, video, and phasing fully operational) Valid Certification. Tech. Fernando Tafoya

HOURS WORKED: 0.25

REPORTED BY: FTAFOYA

START DATE: 6/23/2009 10:00 AM

END DATE: 6/23/2009 10:15.00 AM

WORK ORDER ASSIGNED TO: FTAFOYA

Monthly Preventative Maintenance (PM) Inspection

<p align="center">Start with the Face Camera (if no face camera skip to the main camera enclosure)</p>	
<p>Visually inspect the camera enclosures, flash housings, poles and Pelco bases for loose or missing hardware and general condition.</p>	
<p>Visually inspect enclosure wiring to ensure proper wiring configuration, grounding, and bonding standards are adhered to.</p>	
<p>Visually inspect flash and camera glass for cleanliness and ensure there are no obstructions to block required field of vision to produce required images. Clean glass thoroughly outside. The inside of the glass should only be cleaned if necessary to avoid accidental contact with cameras and the possibility of changing their alignment.</p>	
<p>Check circuit breakers and RCDs for proper operation. (ensure equipment is powered down properly prior to testing RCDs for proper operation; cabinet mounted breakers can be checked during this phase of the inspection to preclude additional equipment power down if desired).</p>	
<p>Check installed equipment for signs of corrosion, loose or missing hardware and ensure wiring is securely attached where required.</p>	
<p>Reset all breakers and configure RCDs for proper operation, reapply power to the computer and ensure proper startup sequencing has occurred.</p>	
<p>Remove any debris that may have accumulated in the enclosure.</p>	
<p align="center">Main Camera</p>	
<p>Verify serial numbers and certificate dates of all detection equipment as applicable (pay particular attention to lane assignments and configurations). Check information against previously documented information and take necessary action if serials numbers do not match or if calibration dates are within 30 days of expiration.</p>	
<p>Visually inspect the camera enclosures, flash housings, poles and Pelco bases for loose or missing hardware and general condition.</p>	
<p>Visually inspect enclosure wiring to ensure proper wiring configuration, grounding, and bonding standards are adhered to.</p>	
<p>Visually inspect flash and camera glass for cleanliness and ensure there are no obstructions to block required field of vision to produce required images. Clean glass thoroughly outside. The inside of the glass should only be cleaned if necessary to avoid accidental contact with cameras and the possibility of changing their alignment.</p>	
<p>Check circuit breakers and RCDs for proper operation. (ensure equipment is powered down properly prior to testing RCDs for proper operation; cabinet mounted breakers can be checked during this phase of the inspection to preclude additional equipment power down if desired).</p>	
<p>Check installed equipment for signs of corrosion, loose or missing hardware and ensure wiring is securely attached where required.</p>	
<p>Reset all breakers and configure RCDs for proper operation, reapply power to the computer and ensure proper startup sequencing has occurred.</p>	
<p>Remove any debris that may have accumulated in the enclosure.</p>	
<p align="center">RIS Cabinet</p>	
<p>Visually inspect the exterior of the control cabinet for signs of corrosion, damaged or missing hardware, and ensure it is properly secured to the concrete pad. Ensure doors and all locks are in good working order.</p>	
<p>Visually inspect the interior of the control cabinet for signs of corrosion, loose or missing hardware and general condition.</p>	
<p>Ensure loop lead-ins are properly grounded and connections are tight and free from corrosion, repair as needed.</p>	
<p>Remove any debris that may have accumulated in the cabinet.</p>	
<p>Check input mains for 120 VAC (+/- 10%) as read across the main circuit breaker.</p>	
<p>Ensure all electrical connections are tight and free from corrosion, repair as required.</p>	
<p>Check circuit breakers and RCDs for proper operation. (ensure equipment is powered down properly prior to testing breakers, checking of the main and camera enclosure breakers can be done at the same time as the enclosure RCDs to eliminate the need for additional equipment shutdown if desired).</p>	
<p>Check phase signaling voltage to ensure 120 VAC (+/- 10%) is present at the input of the phase relay during the activation of the phase being tested. (perform for each phase based on approach configuration).</p>	
<p>Test 12VDC power supply for 120 VAC (+/- 10%) on the input of the device and 12 VDC +/- 1 VDC on the output of the device, adjust the output DC voltage as required.</p>	
<p>Check phase voltage on the DB25 breakout between the ground contact and the switched voltage contact (i.e. pin 14 and 1 for phase as indicated on phase mapping [1]) to ensure 12 VDC during the phase being tested.</p>	

Configuration/Operational Inspection

Associated Equipment	
<p>Visually inspect detection sensors for damage or signs of deteriorating adhesion to the road surface. If sensors require repair or replacement annotate appropriately.</p> <p>Verify vehicle detection system reporting anticipated vehicle speeds (are A and B speeds reported within +/- 3 MPH of each other, if speed detection systems are being checked perform speed verification checks in accordance with applicable speed verification checklists)</p> <p>Ensure all traffic signal lights (for the approach being evaluated) are functioning and signal timing is of normal duration as observed from the main camera location.</p> <p>Check for approach signage and ensure existing signs are still in place and that there have been no changes in posted speed limits to the best of your knowledge.</p> <p>Check for proper operation of signal equipment and report any identified problems to the customer through the CSR.</p> <p>Check for general road, sidewalk, landscape or similar infrastructure conditions and report any identified problems to the customer through the CSR.</p> <p>*NOTE: Complete all physical inspections prior to starting the operational checks of the system.</p>	
<p>Face Camera (if no face camera skip to the main camera enclosure)</p>	
<p>Defrag and error check face computer (if applicable), annotate any errors that cannot be resolved.</p>	
<p>Ensure current date/time settings for the camera being checked are accurate, pay particular attention to time zone.</p>	
<p>Ensure camera being checked has a valid certificate that is not due to expire within the next 60 days, reissue certificate as necessary, annotate records if updates are made.</p>	
<p>Check software configuration (in accordance with appropriate software version checklist) to ensure all settings are accurate, pay particular attention to the databar to ensure the correct software version, location, and approach specific information is accurately depicted.</p>	
<p>Check for proper configuration of the iBoot device and associated software (if applicable).</p>	
<p>Save a copy of the camera data files to be backed up on the SD server at the next available opportunity.</p>	
<p>Main Camera</p>	
<p>Defrag and error check face computer (if applicable), annotate any errors that cannot be resolved.</p>	
<p>Ensure current date/time settings for the camera being checked are accurate, pay particular attention to time zone.</p>	
<p>Ensure camera being checked has a valid certificate that is not due to expire within the next 60 days, reissue certificate as necessary, annotate records if updates are made.</p>	
<p>Check software configuration (in accordance with appropriate software version checklist) to ensure all settings are accurate, pay particular attention to the databar to ensure the correct software version, location, and approach specific information is accurately depicted.</p>	
<p>Ensure approach specific settings are accurate for the enforcement system being operated (trigger setting, speed limits, thresholds, phase configurations, etc.) correct as required and ensure any changes are annotated appropriately.</p>	
<p>Check communications with the SDCM to ensure good connectivity by use of the ping and/or reboot function within Smartcam.</p>	
<p>Check for proper configuration of the iBoot device and associated software (if applicable).</p>	
<p>Save a copy of the camera data files to be backed up on the SD server at the next available opportunity.</p>	
<p>Associated Equipment</p>	
<p>Run a "next vehicle" test detection in each lane being enforced and ensure proper image quality, flash illumination, vehicle placement, and that all required parameters for the location under test are being properly displayed.</p>	
<p>Check communications links to all IP devices and ensure communications connectivity by pinging the bounce machine.</p>	

EXHIBIT "3"



MAKING A SAFER WORLD.

To: Redflex Traffic Systems Inc. Customers
From: California Account Management Team
Re: SB 1303's Impact on Existing Law Regarding Automatic Traffic Enforcement Systems ("ATES") and Evidence Generated by ATES

This memo discusses the impact of the industry's successful efforts to support Senate Bill No. 1303, which was enacted on September 28, 2012. SB 1303 has two primary impacts: (1) it resolves in favor of the admissibility of ATES-generated evidence the conflicting judicial decisions in *People v. Borzakian* (2012) 203 Cal.App.4th 525 and *People v. Goldsmith* (2012) 203 Cal.App.4th 1515; and (2) it adds certain requirements regarding the adoption of ATES, notices of non-liability, signage, and reporting on the effectiveness of ATES.

Impact on Admissibility of Photo Enforcement Evidence

(a) *Presumptions of Authenticity Apply to Photo Enforcement Evidence*
Existing Evidence Code §1552 creates a presumption of authenticity for "a printed representation of computer information or a computer program." Similarly, Evidence Code §1553 creates a presumption of authenticity for "a printed representation of images stored on a video or digital medium."

In *Goldsmith*, the Court of Appeal upheld an ATES-conviction, holding that the admission of ATES-generated evidence was not hearsay, officer testimony was sufficient to authenticate the evidence, and Sections 1552 and 1553 did not require the prosecution to provide first-hand testimony on the accuracy and reliability of the ATES. A month earlier, a different panel from the same Court of Appeal had ruled in *Borzakian* that a police officer was not qualified to lay a proper foundation for ATES-generated evidence and that the statutory presumptions of authenticity (Sections 1552 and 1553) required first-hand testimony demonstrating the reliability of the ATES.

SB 1303 essentially legislatively overrules *Borzakian*, and in so doing also negates the *People v. Khaled* decision and other judicial decisions that found ATES evidence inadmissible. In fact, the Bill Analysis discusses both *Borzakian* and *Goldsmith*, and states that SB 1303 "embraces the *Goldsmith* reasoning." Specifically, SB 1303 amends Evidence Code Sections 1552 and 1553 to state that their presumptions of authenticity expressly apply "to the printed representation of computer-generated information stored by an automated traffic enforcement system." These amendments should undermine arguments that the admission of ATES-generated evidence requires an initial showing that the system is reliable.

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MAKING A SAFER WORLD.

(b) Photo Enforcement Evidence is Not Hearsay

SB 1303 also sides with *Goldsmith* in clarifying that ATES-generated evidence is not hearsay. *Borzakian* had ruled that ATES evidence was hearsay and that the official records and business records exceptions to the hearsay rule were inapplicable. SB 1303 agrees with *Goldsmith* that ATES-generated evidence is not hearsay and amends Vehicle Code §21455.5 to state: "the printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant." This amendment should not only eliminate hearsay challenges, but should also undermine Confrontation Clause challenges because the Confrontation Clause only applies to testimonial hearsay evidence.

SB 1303's Operational Requirements

(a) Notice of Non-Liability

SB 1303 amends Vehicle Code §40518 by creating a standard form "notice of non-liability" to be sent to the registered owner of a vehicle when the driver appears different from the registered owner. The new form expressly encourages owners to respond to the notice and supply the name of the driver at the time of the citation. SB 1303 requires that the notice be "substantively identical" to the standard form, except that it may be translated into other languages.

(b) Additional Requirements for Operation of an ATES

Existing Vehicle Code §21455.5 authorizes the use of an ATES if the system meets certain requirements. SB 1303 adds the following requirements: (i) the agency must create uniform guidelines for operation and establish procedures to ensure compliance with those guidelines; (ii) the agency must post signs within 200 feet of an intersection where an ATES is operating; (iii) the agency considering where to install an ATES must not consider revenue generation beyond that sufficient to covering operating costs.

(c) Reporting by Vendor

SB 1303 also amends Vehicle Code §21455.5 to require ATES vendors to submit an annual report to the Judicial Council that includes information that is readily available regarding the number of alleged violations captured, the number of citations issued (and how many were for traveling straight, turning right, and turning left), the number and percentage of citations dismissed by the court, and the number of traffic collisions at each intersection that occurred prior to and after the installation of the ATES.

Conclusion

SB 1303 is a vote by the California Legislature in favor of ATES. The changes enacted by this legislation overrule *Borzakian* and expressly reject the most commonly used (and commonly litigated) challenges to the admission of ATES-generated evidence. SB 1303 also expressly allows, for the first time, notices encouraging registered owners to identify the driver who committed the infraction.



MAKING A SAFER WORLD.

SB 1303 - Sponsored by Senator Simitian - this is a repeat of the bill we've worked the last two sessions. The efforts of Cal Chiefs to help defeat or stall the measure in the past have been critical to the success. We have all tried on numerous occasions to meet with the Senator and his staff to reach a compromise on some key provisions. Until this year, these efforts have not been very successful. Earlier this month, our lobbyist met with the Senator's staff and representatives from the AOC to discuss codifying a standard TVN (or Courtesy Notice) form. In addition, Redflex has suggested amending the bill to seek to confirm and codify existing law, as set forth in People v. Goldsmith, and to further clarify that any discussion in People v. Borzakian to the contrary is superseded by the statute. Both of these suggested amendments were provided to the Senator at his request and with his acknowledgement of a desire to reach a compromise. No agreement has been reached and although hopeful, true results remain to be seen.

Redflex has agreed to continue discussions with the Senator and will keep all of our customers posted of any activity. The bill has been referred to Senate Appropriations.

SB 1570 - This bill allows for a local public agency to install and operate an automated parking enforcement system on street sweepers operated by a private vendor.

Redflex is behind this bill to allow our customers who outsource street sweeper services to utilize automated enforcement. We encourage you to contact your local delegation to express your support for this bill. It has passed the Senate Transportation committee and been referred to the Senate Judiciary committee.

We all greatly appreciate your willingness to assist with this process, and I'm available anytime to answer questions or address concerns about pending legislation.

My contact information is:

Tamara Dietrich

Director of Legislative Affairs

Redflex Traffic Systems Inc.

Phone 623-2[REDACTED]

Mobile 623-2[REDACTED]

Email [REDACTED]@redflex.com

1 **PROOF OF SERVICE**

2 CCP §§ 1010.6, 1011, 1013, 1013a, 2015.5; Cal. Rules of Court, Rules 2.260, 2.306 [Rev. 1/1/09]

3 **STATE OF CALIFORNIA**)
4) **ss.**
5 **COUNTY OF LOS ANGELES**)

- 6 1. At the time of service I was over 18 years of age and **not a party to this action.**
- 7 2. My residence or business address is **[X]** Hersh, Mannis & Bogen, L.L.P., 9150 Wilshire Boulevard, Suite 209, Beverly Hills, CA 90212-3429.
- 8 3. On October 10, 2014, I served the following **document(s)**:

9 **APPELLANT'S SUPPLEMENTAL BRIEF FOLLOWING REMAND
10 FROM THE SUPREME COURT OF CALIFORNIA**

11 4. I served the documents on the **person or persons** below, as follows:

12 a. Name of person(s) served:

13 **SEE ATTACHED LIST.**

14 b. Business or residential address(es) where person(s) was served:

15 **SEE ATTACHED LIST.**

16 5. The document(s) were served by the following means:

17 **[X]** **By United States Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and:

18 **[X]** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

19 I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Beverly Hills, California.

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

21 Date: October 10, 2014

22 
23 Carol Maddon

SERVICE LIST

Caroline Karabian Castillo
Dapeer Rosenblit & Litvak LLP
11500 W Olympic Blvd #550
Los Angeles, CA 90064

Clerk of the Court
350 McAllister Street
San Francisco, CA 94102-4797

Appellate Division of Superior Court
111 N. Hill St.
Los Angeles, CA 90012

Hon. Carol J. Hallowitz
Los Angeles Superior Court
9335 Burton Way
Beverly Hill, CA 90212

John Michael Hynes
Sheppard Mullin
333 S. Hope Street, 43rd Floor
Los Angeles, CA 90071

Melissa Mabel Crosthwaite
City Attorney's Office, City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

Kin Wah Kung
4411 Elaiso Common
Fremont, CA 94536-5626

Joseph William Singleton
Law Offices of Joseph W. Singleton
5950 Canoga Avenue, Suite 130
Woodland Hills, CA 91367

Robert Cooper
Wilson Elser Moskowitz Edelman & Dicker LLP
555 South Flower Street, 29th Floor
Los Angeles, CA 90071

Sherman M. Ellison
Sherman M. Ellison & Associates
15303 Ventura Boulevard, 9th Floor
Sherman Oaks, CA 91403

Peter Winkler
104A Main Street
Tiburon, CA 94920

Richard Allen Baylis
9042 Garfield Avenue, Suite 306
Huntington Beach, CA 92646

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