

1 Nxxx Lopez
2 Street
3 City
4 Telephone 650-
5 In Pro Per

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7 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN MATEO
9 APPELLATE DIVISION

10 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: AD-xx20
11 Plaintiff and Respondent,) **Appellant's Opening Brief**
12 vs.)
13 Nxxx Lopez,)
14 Defendant and Appellant)

15
16 APPEAL FROM SUPERIOR COURT, NORTHERN JUDICIAL DISTRICT
17 HONORABLE COMM. JOSEPH K. ALLEN SUPERIOR COURT CASE N6xx089

18
19 **PRELIMINARY STATEMENT**

20 Appellant Nxx LOPEZ (herein "Appellant") was issued an automated red light enforcement
21 traffic citation 001566 on February 19, 2009 for an alleged violation of California Vehicle Code Vehicle
22 Code § 21453(a), failure to stop on a red light in Daly City. After Appellant's entry of a "not guilty" plea,
23 a court trial was scheduled and held on July 2, 2009 before Commissioner Joseph Allen, San Mateo
24 County Superior Court Traffic Division, Northern Branch. Appellant had made a timely objection
25 (foundation) to the introduction of this evidence at trial. At the beginning of the reading of the evidence
26 against me, I made a timely objection (foundation) to the evidence being presented. I was allowed to
27 present the basis of my objection (failure of the issuing agency to meet CVC § 21455.5(g)(1)). My
28 recollection is that Commissioner Allen said that he would consider my objection, but Sgt. Mxxx
ultimately was allowed to continue reading off the entirety of the camera evidence specific to my citation.
Upon conclusion of the court trial, including the submission of testimony and evidence, ruling on motions

1 and arguments, the trial court found Appellant guilty of a traffic infraction and assessed a fine in the
2 amount of \$436.00.

3 Appellant filed a timely Notice of Appeal and proposed statement of appeal.

4 On September 9, 2009, a Settled Statement on Appeal hearing was held before the trial court,
5 Commissioner Joseph Allen presiding. A Settled Statement was prepared by Commissioner Allen. On
6 September 23, 2009, a Notice of Filing Record was filed and served by the appellate department

7 On a related note, on September 22, 2009, this appellate court reversed *People v. Bullock*
8 (AD-5096) the same charge originating from the same Vehicle Code § 21455.5 (g)(1) / Redflex Contract
9 Cost Neutrality. (unpublished and otherwise uncited here). The scenario, analysis and argument presented
10 herein is nearly identical.

11 ISSUE ON APPEAL

12 Appellant's issue on appeal is described by the trial court in the Settled Statement:

13 "Appellant presented evidence pertaining to the legality of Daly City's contract with
14 Redflex. He argued that its provisions violate the language of Vehicle Code § 21455.5 (g)(1)
15 which prohibits contracts which include provision for payment of compensation based on the
16 number of citations generated, or as a percentage of the revenue generated. In support of his
17 argument, he introduced an appellate opinion out of Orange County which found that the City of
18 Fullerton's contract with NTS violated § 21455.5 inasmuch as it was not cost neutral." At note 1,
19 it continues – "At the statement settlement hearing, appellant was permitted to introduce a second
20 Orange County opinion filed by Commissioner Schwartz which found that the contract between
21 the City of Los Alamitos and Red Flex Systems violated VC 21455.5 provisions banning cost
22 neutrality. It, along with the Daly City and Los Alamitos contracts with Red Flex Systems were
23 received and made part of the record herein."

24 ARGUMENT

- 25 **1. California Vehicle Code § 21455(g)(1) prohibits a contract between a governmental**
26 **agency and a manufacturer or supplier of automated enforcement equipment that**
27 **provides for payment or compensation based on the number of citations generated**
28 **or as a percentage of the revenue generated as a result of the use of the equipment¹**

California Vehicle Code § 21455.5(g)(1) provides:

¹ Stats. 2003 Ch 511, §1(Assembly Bill 1022). Author J. Oropeza; Co-author K. Murray; Topic: Vehicles – automated enforcement systems
(amend Vehicle Code §§21455.5, 21455.6 and 21455.7 Effective date January 1, 2004.

1 “A contract between a governmental agency and manufacturer or supplier of automated
2 enforcement equipment may not include a provision for the payment or compensation to
3 the manufacturer or supplier based on the number of citations generated, or as a
4 percentage of the revenue generated, as a result of the use of the equipment authorized
5 under this section”

6 **A. The Standard for Determining the Legislatures intent – Statutory Construction.**

7 The California Supreme Court in *Connerly v. State Personnel Bd*, 37 Cal 4th 1169, 1179 (2006) reiterated
8 the applicable standard used in addressing questions of statutory construction “The fundamental purpose
9 of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the
10 law....In order to determine this intent, we must begin by examining the language of the statute”.

11 (citation omitted). California’s high court has cited this cardinal principle of law in several decisions [see
12 e.g. *Peracchi v. Superior Court*, 30 Cal 4th 1245, 1253 (2003); *People v. Garcia*, 28 Ca 4th 1166, 1171,
13 (2002); *People v. Murphy*, 25 Cal. 4th 136,142 (2001); See generally rules of statutory construction:
14 Vehicle Code § 6 (construction of code); Code Civ Proc § 1857 (general rule re: construction of statutes);
15 Code Civ Proc § 1859 (intention of Legislation as controlling)]

16 The Legislative Counsel’s Digest of Assembly Bill 1122 clearly confirms the prohibition of a
17 contract provision that includes a provision for the payment or compensation based on the number of
18 citations generated or as a percentage of revenue generated: “The bill...would prohibit a contract between
19 a governmental agency and a manufacturer or supplier of automated enforcement equipment from
20 including a provision for the payment or compensation to the manufacturer or supplier based on the
21 number of citations generated, or as a percentage of the revenue generated, as a result of the use of the
22 equipment...”(Emphasis added)²

23 **B. A Reasonable Interpretation of Vehicle Code § 21455.5(g)(1) Supports the**
24 **Conclusion that Contracts Based on the Number of Citations Generated or as a**
25 **Percentage of the Revenue Generated is Prohibited and is in Violation of Law**

26 Utilizing the established standard for determining the Legislation’s intent and principles of
27 statutory construction and based on the plain meaning of the statutory language, giving the words their

28 ² Stats. 2003, Ch 511, §1(Assembly Bill 1022), Legislative Counsel’s Digest

1 usual and ordinary meaning (*Leonte vs. ACS State & Local Solutions, Inc.* (2004) 123 Cal. App 4th 521,
2 526-7), there is no ambiguity that the amendment to the Vehicle Code § 21455.5(g)(1) intended “to
3 prohibit a contract between a governmental agency and a manufacturer or supplier of automated
4 enforcement equipment from including a provision for the payment or compensation to the manufacturer
5 or supplier based on the number of citations generated, or as a percentage of the revenue generated (See
6 *People v. Garcia*, Id at 1172 (Citations omitted):”In considering a statute, our task is to determine the
7 Legislature’s intent and purpose for the enactment. We look first to the plain meaning of the statutory
8 language, giving the words their usual and ordinary meaning. If there is no ambiguity in the statutory
9 language, is plain meaning controls; we presume the Legislature meant what is said. However, if the
10 statutory language permits more than one reasonable interpretation, courts may consider various extrinsic
11 aids, including the policy and the statutory scheme encompassing the statute.”

12 **II The City of Daly City Contract with Redflex Traffic Systems, Inc. For Automated**
13 **Red Light Photo Enforcement Cameras Violates the Intent and Spirit of Vehicle**
14 **Code § 21455.5(g)(1)³**

15 **A. The City of Daly City/Redflex Contract’s Cost Neutrality Clause in**
16 **(Contract)Exhibit “D”(Compensation and Pricing) Constitutes Illegal**
17 **Compensation Based on Revenue Generated in Violation of the Intent and Spirit of**
18 **Vehicle Code § 21455.5(g)(1)⁴**

19 Exhibit “D” (Compensation and Pricing) of the City of Daly City/Redflex contract provides for a
20 fixed fee of \$6,000 per month per enforcement approach (Emphasis added). It continues:

21 “Cost Neutrality

22 Cost neutrality is assured the customer. Cost neutrality is assured to customer using this
23 methodology as the customer will never pay Redflex more than actual cash received.

24 The customer agrees to pay Redflex within thirty (30) days after the invoice is received. City
25 shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with the
26 terms set forth above, to the extent that the gross cash received by the City from the automated
27 red light violations. In the event that the balance remains unpaid due to a deficit in gross cash
28 received by the City compared to the invoiced amounts, City will provide to Redflex with each
monthly payment, an accounting of such gross receipts supporting the amount withheld.
(Emphasis added)

1. In event that the contract ends or is terminated and an invoiced balance is still owed to
Redflex, all subsequent receipts from automated red light violations for a period of 12 months
from the date of termination will be applied to such balance and paid to Redflex

³ Contract dated May 11, 2007. Reference is made to Exhibit D” (Compensation and pricing)

⁴ This type of contract undermines the public trust and raises concern that systems can be manipulated for profit. AAA Release (4/18/03)

1 2. Payment will only be made by Customer up to the amount received by customer from the
2 County through the collection of red light citation up to the amount currently due.“(Emphasis
3 added)
4 (Part 3 and 4 omitted as irrelevant to this action)

5 An initial reading of Exhibit “D” (Compensation and Pricing), without taking into consideration
6 the language of the Cost Neutrality, is misleading because it would support the conclusion that the City of
7 Daly city/Redflex contract is exclusively based on a fixed fee of \$6,000 per month for each enforced
8 approach. (The practical effect of a fixed fee contract is that the parties share financial risks between the
9 city and the vendor).

10 Nevertheless, when the fixed fee language of Exhibit “D” is read in conjunction with its “Cost
11 Neutrality” language, it becomes abundantly clear that the City of Daly City shall never be responsible for
12 any compensation or payment to Redflex greater than the fines received. This means that the City of Daly
13 City is never at financial risk of the red light photo enforcement camera system.

14 The “Cost Neutrality” clause provides an absolute safeguard to the City of Daly City with the
15 assurance from Redflex that the vendor agrees to absorb, eliminate or reimburse customer (City of Daly
16 City) for the excess expense thereby covering the cost for system operation so that the Customer achieves
17 cost neutrality in accordance with the representation that the system(s) shall pay for themselves.
18 The “Cost Neutrality” clause removes all potential financial risks from the customer, City of Daly City, as
19 the city is only required to pay Redflex an amount equal to the fines received. The City of Daly City is
20 never at financial risk to pay for any negative or shortfall in citation revenues. This “Cost Neutrality”
21 clause shifts the total burden of potential risks for the red light photo enforcement camera system directly
22 to the vendor, Redflex.

23 This shift in financial risks exclusively to the vendor provides the vendor, as a for-profit business
24 entity, with an incentive to increase profits by maximizing the number of citations issued or revenues
25 generated, thus undermining the public trust and raising the concern that the system can be manipulated
26 for profit motives. The prohibition of this type of unethical conduct is precisely the intent and spirit
27 behind the amendment to Vehicle Code § 21455.5(g)(1)[Assembly Member J. Oropeza (now Senator)
28 during an Assembly Floor hearing on the analysis of Assembly Bill 1022 on August 23, 2003, entered the

1 following statement into the record: "Paying red light camera operators based on the number of tickets
2 issued undermines the public trust and raises concern that these systems can be manipulated for profit."]

3 The City of Daly City/Redflex contract engages in deceptive tactics by utilizing "amount
4 withheld" and misleading labels to avoid direct reference to "per ticket" or "percentage of revenues" as
5 the identifier of citation revenues. Despite the effort to deny the true motivation to shield the
6 characterization of citation revenues, the use of "Cost Neutrality" concept is nothing more than an attempt
7 to circumvent the actual intent and spirit of Vehicle Code § 21455.5(g)(1), which was to bring fairness
8 and equity to the red light camera enforcement process. The first and primary focus is properly placed on
9 public safety. The generation of citation revenues is only a secondary goal.

10 Unfortunately, because of today's difficult financial and budgetary times, many local government
11 entities such as the City of Daly City have fallen prey to the temptation to raise revenues by conveniently
12 overlooking the enforcement provisions of Vehicle Code § 21455.5(g)(1). With the willing participation
13 of unscrupulous for-profit vendors such as Redflex, the City of Daly City is participating in an unlawful
14 scheme to increase revenues acting under the guise of aggressively protecting public safety. Red light
15 violations is a legitimate public safety concern, but the bottom line requires compliance with applicable
16 law as provided in § 21455.5(g)(1)

17 In an effort to circumvent applicable law, governmental agencies and vendors/manufacturers of
18 Red Light Photo Enforcement Camera systems have entered into contractual agreements prominently
19 designated as "fixed fee", but with a "Cost Neutrality" clause that ensures that a governmental agency
20 shall never be at risk for covering actual costs for red light photo enforcement camera systems.

21 The court must not be misled by the City of Daly City/Redflex faux "Fixed Fee" contract. The
22 contract must be read in its entirety in conjunction with the "Cost Neutrality" clause. Taken together with
23 the "Fixed Fee" exhibit – contract Exhibit "D" – and the "Cost Neutrality" clause clearly violates the
24 intent and spirit of Vehicle Code § 21455.5(g)(1) prohibition against payment or compensation based on
25 revenues generated by citations.

26 In summary, the City of Daly City/Redflex's "Cost Neutrality" clause is tied directly to citation
27 revenues generated, thus shifting the financial risks exclusively to the vendor. In this scenario, the vendor
28 as a for-profit business entity has an incentive to increase profits by maximizing the number of citations

