

ORIGINAL

FEB 10 2010

ALAN CARLSON, Clerk of the Court

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7  
8 APPELLATE DIVISION  
9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 PEOPLE OF THE STATE OF )  
12 CALIFORNIA, )  
13 Plaintiff / Respondent, )

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

**APPLICATION FOR LEAVE TO FILE  
BRIEF AS AMICUS CURIAE**

14 vs. )

15 [REDACTED] KHALED, )  
16 Defendant / Appellant. )

17 )  
18 CITY OF SANTA ANA, )  
19 Amicus Curiae. )  
20 )

21 **TO THE HONORABLE JOSEPHINE S. TUCKER, ACTING PRESIDING**  
22 **JUDGE:**

23 Pursuant to Rule 8.882(d) of the *California Rules of Court*, the CITY OF SANTA  
24 ANA AND THE CITY OF SANTA ANA POLICE DEPARTMENT (hereinafter  
25 referred to as the "City") hereby requests the permission of the Presiding Judge to file an  
26 amicus curiae brief. The proposed brief is attached herewith as Exhibit "A" and  
27 incorporated herein by this reference.

28 ///

1 AMICI CURIAE

2 Applicant for leave to file brief as amicus curiae is the City. Counsel for the City  
3 authored the proposed amicus curiae brief in whole. No other person or entity  
4 participated in the drafting of the proposed amicus curiae brief or made a monetary  
5 contribution intended to fund the preparation or submission of the proposed amicus  
6 curiae brief.

7 INTEREST OF AMICI CURIAE

8 The City has a unique interest in this matter because the appeal presents a direct  
9 challenge to the legality of the City's automated red light photo enforcement camera  
10 system and procedures. As such, any decision by the Court will directly affect the City  
11 and its camera system. In fact, the underlying issue in this case is not only of great  
12 concern to the City, but also potentially affects other cities operating such systems.

13 NEED FOR FURTHER BRIEFING

14 The City has an interest in ensuring that California's statutory scheme governing  
15 red light cameras is properly interpreted and implemented. The California Supreme  
16 Court even recognized that the City of Santa Ana Police Department was a Real Party in  
17 Interest in a similar automated red-light photo citation case. (*People v. Fischetti; City of*  
18 *Santa Ana Police Department, Real Party in Interest*, 2009 Cal. LEXIS 2544 (Cal., Mar.  
19 10, 2009), amending *People v. Fischetti*, 2009 Cal. LEXIS 1589 (Cal., Feb. 25, 2009). In  
20 *Fischetti*, the California Supreme Court specifically amended its order granting the  
21 City's petition for depublication by changing the case title and adding the City of Santa  
22 Ana Police Department as Real Party in Interest. (*Id.*)

23 In addition, the City is responsible for enforcement of California laws.  
24 Specifically, section 703(d) of the *Santa Ana City Charter* authorizes the City Attorney  
25 to prosecute misdemeanor offenses and infractions arising upon violations of the laws of  
26 the state on behalf of the people as in his opinion. The District Attorney is the prosecutor  
27 for the people in this case, but it is clear that City has a unique interest in the enforcement  
28 of these violations.

1 Further, the adversarial system requires briefing and oral argument by more than a  
2 single party in order to work properly. However, the District Attorney did not file a brief  
3 on behalf of the People in the instant matter. As such, the City's proposed amicus brief  
4 can assist the Court in deciding the matter because the City has the unique perspective of  
5 being able to present information and arguments directly bearing on these issues.


6 CONCLUSION

7 Based on the foregoing, the City respectfully requests that the Court grant the  
8 City's application for leave to file the proposed amicus curiae brief in the above-  
9 captioned matter.

10  
11 Respectfully submitted,

12 JOSEPH W. FLETCHER  
13 City Attorney

14  
15 Dated: February 10, 2010

16 By:   
17 TERESA L. JUDD  
18 Deputy City Attorney

EXHIBIT

A

Exhibit A

1 JOSEPH W. FLETCHER (SBN 96813)  
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11 PEOPLE OF THE STATE OF )  
12 CALIFORNIA, )  
13 Plaintiff / Respondent, )

14 vs. )

15 [REDACTED] KHALED, )  
16 Defendant / Appellant. )

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

) **CITY OF SANTA ANA'S AMICUS  
) CURIAE BRIEF**

17 )  
18 CITY OF SANTA ANA, )  
19 *Amicus Curiae.* )  
20 )

21  
22 **TO DEFENDANT / APPELLANT, COUNSEL FOR DEFENDANT /**  
23 **APPELLANT, AND THIS HONORABLE COURT:**

24 **PLEASE TAKE NOTICE** that Amicus Curiae, the CITY OF SANTA ANA  
25 AND THE CITY OF SANTA ANA POLICE DEPARTMENT (hereinafter referred to as  
26 the "City") hereby submits the following Brief in response to Defendant / Appellant's,  
27 [REDACTED] KHALED (hereinafter referred to as "Appellant"), Opening Brief, and in  
28 advance of any appellate hearing in the above-captioned matter.

1 **I. INTRODUCTION**

2 The Appellant in the above-captioned matter was issued a Notice of Traffic  
3 Violation and Notice to Appear pursuant to the City's automated traffic enforcement  
4 system. The Appellant committed a violation of *Vehicle Code* section 21453(a), failure  
5 to stop at a red light, at the intersection of Seventeenth Street and Tustin Avenue in the  
6 City of Santa Ana. On April 1, 2009, after being presented with evidence regarding the  
7 violation, the court found the Appellant guilty of the alleged violation. Appellant now  
8 contends that the City did not comply with the warning notice requirement of *Vehicle*  
9 *Code* section 21455.5(b), thus negating the legitimacy of the City's automated traffic  
10 enforcement system. However, as detailed below, the City has met each and every  
11 requirement, including the issuance of warning notices, for its automated traffic  
12 enforcement system. Accordingly, the Appellate Division should uphold the reasonable  
13 and justified ruling of the underlying court to find the Appellant guilty of failing to stop  
14 at a red light.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 On August 2, 2008, the City's automated traffic enforcement system captured  
17 Appellant failing to stop at a red light at the intersection of Seventeenth Street and Tustin  
18 Avenue in the City of Santa Ana, in violation of *Vehicle Code* section 21453(a).  
19 Subsequently, on August 8, 2008, a Notice of Traffic Violation and Notice to Appear  
20 was issued to the Appellant and filed with the Orange County Superior Court.

21 The matter proceeded to a court trial on April 1, 2009.<sup>1</sup> Santa Ana Police  
22 Department Officer Berg was present in court and testified for the People. After hearing  
23 testimony from Officer Berg, the court admitted and received People's Exhibits # 1, 2, 3,  
24 4, 5, 6, 7, and 8 into evidence. At the conclusion of arguments, the Court denied the  
25 Penal Code section 1118 motion made by the defense, reviewed the photographs and  
26

27 <sup>1</sup> The factual and procedural background regarding the trial that is set forth herein is based solely on the court docket and  
28 Appellant's representations in the Settled Statement and Appellant's Opening Brief. The City, as Real Party in Interest, was not  
provided notice of the Hearing on Settled Statement and therefore did not participate in the Settled Statement.

1 video of the incident, and found the Appellant guilty of violating *Vehicle Code* section  
2 21453(a), as charged in the original citation. Court Docket, sections 12-16; Settled  
3 Statement, p.5, lines 1-3.

4 After being found guilty at the court trial, the Appellant filed a Notice of Appeal  
5 on April 29, 2009. On May 29, 2009, after first becoming aware of the appeal, the City  
6 of Santa Ana filed a motion to intervene as Real Party in Interest and requesting a  
7 rehearing on the Settlement of Statement of Appeal. Thereafter, on September 23, 2009,  
8 the Court officially served the City of Santa Ana with Notice of Filing Record on Appeal  
9 and Notice of Briefing Schedule. On or around December 9, 2009, the court clerk was  
10 directed to return City's Appellate Brief without prejudice to the making of a motion to  
11 appear as real party in interest in this matter. On or around February 9, 2009, the City  
12 received the Court's order denying its motion to intervene as real party in interest  
13 without prejudice to the serving and filing, no later than February 10, 2010, of an  
14 application to file an amicus curiae brief, accompanied by the proposed amicus curiae  
15 brief. Accordingly, the arguments found herein follow in response to the filing of  
16 Appellant's Opening Brief and the Court's order.

### 17 **III. ARGUMENT**

#### 18 *A. VEHICLE CODE SECTION 21455.5(b) DOES NOT REQUIRE 30 DAYS OF* 19 *WARNING NOTICES FOR EACH INTERSECTION*

20 Before operating an automated traffic enforcement system, a local agency must  
21 comply with *Vehicle Code* section 21455.5(b), which states in pertinent part that, "Prior  
22 to issuing citations under this section, a local jurisdiction utilizing an automated traffic  
23 enforcement system shall commence a program to issue only warning notices for 30  
24 days." The City of Santa Ana complied with this requirement when it issued warning  
25 notices for 44 days prior to the inauguration of its automated traffic enforcement system.

26 ///

27 ///

28 ///

1           i.       *STATUTORY ANALYSIS CONFIRMS THAT THE 30 DAYS OF WARNING*  
2                    *NOTICES ARE ONLY REQUIRED AT THE COMMENCEMENT OF THE*  
3                    *OVERALL AUTOMATED TRAFFIC ENFORCEMENT SYSTEM*

4           It is well accepted law that, “the words of the statute must be construed in context,  
5 keeping in mind the statutory purpose, and statutes or statutory sections relating to the  
6 same subject must be harmonized, both internally and with each other, to the extent  
7 possible.” *Dyna-Med, Inc. v. Fair Employment and Housing Commission* (1987) 43  
8 Cal.3d 1379, 1387 (citations omitted).

9           The statutory scheme governing automated traffic enforcement citations makes  
10 several references to the “system.” When used in *Vehicle Code* sections 21455.5 and  
11 21455.6, the term “system” refers to overall coordination and installation of red light  
12 cameras throughout a city’s jurisdiction. For example, *Vehicle Code* section 21455.6  
13 states that, “A city council... shall conduct a public hearing on the proposed use of an  
14 automated enforcement system...” In addition, *Vehicle Code* section 21455.5(c)  
15 provides that, “Only a governmental agency, in cooperation with a law enforcement  
16 agency, may operate an automated enforcement system.” Further, *Vehicle Code* section  
17 21455.5(d) makes reference to “The activities listed in subdivision (c) that relate to the  
18 operation of the system.”

19           In contrast, when referring to individual cameras that together make up the  
20 “system,” the statutory scheme uses the term “equipment.” For example, *Vehicle Code*  
21 section 21455.5(c)(2)(B) mandates that the “equipment” is regularly inspected. In  
22 addition, *Vehicle Code* section 21455.5(c)(2)(C) requires a city to ensure that the  
23 “equipment” is correctly installed, calibrated, and working properly.

24           By drawing a distinction between the “system” and “equipment” throughout the  
25 statutory scheme, it appears the Legislature intended the word “system” to refer to all the  
26 automated enforcement system “equipment” used by the governmental entity. This is  
27 consistent with generally accepted definitions of a “system” as “a regularly interacting or  
28 interdependent group of items forming a unified whole.” See, Merriam-Webster’s



1 Collegiate Dictionary (10<sup>th</sup> ed. 1993) pg. 1194. This definition lends support for the  
2 position that “system” means the City’s overall plan for the installation of red light  
3 cameras at designated intersections within its jurisdiction.

4 *Vehicle Code* section 21455.5(b) specifically requires that, “Prior to issuing  
5 citations under this section, a local jurisdiction utilizing an automated traffic enforcement  
6 system shall commence a program to issue only warning notices for 30 days.” This code  
7 section does not state that the warning notice program must be implemented when each  
8 camera comes on line at a given intersection, but rather only before issuing tickets under  
9 this section. In addition, the reference in the code section to the “system” rather than the  
10 “equipment,” as analyzed above, is a clear indication that the intent was to require the  
11 warning notices at the commencement of the overall automated traffic enforcement  
12 system.

13 Nonetheless, Appellant still argues that the equipment at each intersection  
14 constitutes a separate system requiring the issuance of warning notices.<sup>2</sup> If Appellant’s  
15 logic was accepted, it would require the City to hold a public hearing and make public  
16 announcements before each additional intersection in the City could be brought on-line  
17 for automated traffic enforcement. However, there is nothing in the statutory language  
18 that implies the Legislature intended such multiple hearings, or intended to require the  
19 City to provide warning notices for 30 days at each intersection after installation of an  
20 automated enforcement system has commenced. To the contrary, *Vehicle Code* section  
21 21455.5(b) refers to “a public announcement,” which implies a single rather than a series  
22 of announcements, hearings, and warning notices.

23 To further exemplify the absurdity of Appellant’s statutory interpretation,  
24 according to Appellant’s argument, the City cannot hold one public hearing and execute  
25

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26 <sup>2</sup> Appellant refers to other unreported rulings of the Appellate Division to support the proposition that *Vehicle Code* section  
27 21455.5(b) requires warning notices be issued for a period of 30 days following the installation of each photo enforcement  
28 camera in the city rather than a 30 day warning period from installation of the overall automated traffic enforcement system.  
However, unreported decisions do not constitute binding precedent. Specifically, *California Rule of Court*, Rule 8.1115(a) states  
that, except in situations not relevant here, an opinion of a California Court of Appeal or superior court appellate division that is  
not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

1 one contract for the installation of cameras, as authorized by *Vehicle Code* section  
2 21455.6(a), but must instead hold as many public hearings and execute as many contracts  
3 as there are intersections to be incorporated into a city's automated traffic enforcement  
4 system.

5 As detailed herein, the statutory language clearly refers to the "system" as the  
6 overall automated traffic enforcement system, and not the "equipment" found at each  
7 intersection. As such, the City is only required to issue warning notices for 30 days after  
8 the implementation of the overall system, which the City did. Accordingly, the City  
9 complied with the warning notice requirements of *Vehicle Code* section 21455.5(b).

10 ii. *THE LEGISLATIVE INTENT IS SATISFIED BY THE ISSUANCE OF*  
11 *WARNING NOTICES AT THE COMMENCEMENT OF THE OVERALL*  
12 *AUTOMATED TRAFFIC ENFORCEMENT SYSTEM*

13 The primary goal of the automated traffic enforcement system is to change driver  
14 behavior, thereby reducing the number of red light violations, and the resulting number  
15 of right angle collisions, injuries, and deaths. The notion that the Legislature intended  
16 the warning notice program to be implemented over and over again, long after a city has  
17 begun operation of the system, would frustrate the legislative purpose, not advance it.

18 Appellant argues that the Legislative intent of the warning notice requirement was  
19 to provide motorists with "fair warning" that the government intends to use automated  
20 traffic enforcement technology. However, the warning notices do virtually nothing to  
21 provide the general public with additional "warning" of the system because the only  
22 people that would even receive that "warning" would be those few motorists who  
23 illegally run a red light during those 30 days.

24 *Vehicle Code* section 21455.5(a) also requires that a jurisdiction erect warning  
25 signs to alert drivers to the use of automated enforcement within the city. However, this  
26 sign requirement allows the city to choose one of two methods to warn motorists of the  
27 automated traffic enforcement system. The city will satisfy this requirement if either  
28 there are "signs that clearly indicate the system's presence and are visible to traffic

1 approaching from all directions, or posts signs at all major entrances to the city,  
2 including, at a minimum, freeways, bridges, and state highway routes.” Therefore, if a  
3 city chooses to post the signs announcing the program at the major entrances to the city,  
4 there is no requirement that each individual intersection be marked with signs. If, as  
5 Appellant contends, the Legislature intended warning notices to be issued over and over  
6 again at each intersection so as to provide to motorists “warning” of the camera’s  
7 presence, then the same Legislature would have required warning signs at each  
8 intersection. However, the Legislature allows the posting of signs at major entrances to  
9 the city only, which defeats any argument that the Legislature intended that the public be  
10 given “warning” as to each individual intersection where automated traffic enforcement  
11 equipment may be located.

12 The primary Legislative intent for allowing the implementation of automated  
13 traffic enforcement systems was to create safer roads. Such intentions do not mandate  
14 the issuance of warning notices at each intersection. Rather, the issuance of warning  
15 notices at the implementation of the automated traffic enforcement system only satisfies  
16 the Legislative intent set forth in the subject code sections.

17 *iii. THE REJECTION OF A LEGISLATIVE AMENDMENT DOES NOT*  
18 *PROVIDE ANY GUIDANCE ON STATUTORY INTERPRETATION*  
19 *BECAUSE THE SPECIFIC REASON FOR REJECTION IS NOT KNOWN*

20 In support of his statutory interpretation, the Appellant notes the Legislature’s  
21 rejection of Senate Bill 780, a proposed 2003 amendment that would have modified the  
22 law governing automated traffic enforcement citations issued under *Vehicle Code* section  
23 21455.5. However, the Senate Bill 780 Bill Analysis does not shed any light on this  
24 warning notice issue. Even if it did, however, it is not possible to determine if the  
25 rejection of any proposed language evidenced a Legislative rejection of a link between  
26 the grace period and the installation of the city’s first automated enforcement system, or  
27 alternatively, whether any proposed language was intended as a clarification of existing  
28

1 law which was rejected as unnecessary. Either way, the Legislative history is not  
2 dispositive.

3       Therefore, as detailed above, it is clear that the 30 day warning period applies  
4 only to installation of the first intersection's camera in the overall automated traffic  
5 enforcement system. Since the City issued warning notices for 44 days prior to the initial  
6 issuance of actual citations pursuant to its automated traffic enforcement system, the City  
7 complied with the warning notice requirement of *Vehicle Code* section 21455.5(b).

8 *B. THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT AND*  
9 *ADMISSIBLE*

10       During the underlying court trial in the above-captioned matter, Officer Alan Berg  
11 of the Santa Ana Police Department provided testimony regarding the City's automated  
12 traffic enforcement system, including the operation of the automated traffic enforcement  
13 system, posted signs identifying the system's presence, public hearings conducted by the  
14 City, public announcements by the City, and the alleged violation captured by the photo  
15 enforcement system. Although not reflected in the Settled Statement, which was  
16 prepared by Appellant, standard Santa Ana Police Officer testimony in these red light  
17 camera prosecutions also includes that the officer received classroom and field training  
18 detailing the function of the automated system and has been certified to operate the  
19 Redflex Smart-Cam System. Further, Officer Berg testified regarding the warning  
20 notices that the City issued for 44 days from May 18, 2003, through June 30, 2003, in  
21 satisfaction of *Vehicle Code* section 21455.5(b). Officer Berg submitted a document  
22 identified as Exhibit 4, which was a particular document regarding the City's automated  
23 traffic enforcement system that detailed the warning notices issued by the City.

24       Officer Berg also submitted Exhibit 3, a Declaration of Custodian of Records  
25 signed by an employee of Redflex in accordance with California Evidence Code section  
26 1280 and Declaration of Technology signed by an employee of Redflex in accordance  
27 with Evidence Code section 1561, to lay a foundation for admission of the data obtained  
28 from the photo enforcement system. Appellant now contests the sufficiency of Officer

1 Berg's testimony. Specifically, Appellant contends that People's Exhibits 3 and 4 lacked  
2 foundation and constituted hearsay.

3         Simply put, the court properly admitted this evidence based upon the admissible  
4 testimony of the officer, who based on his in-class and field training qualified as an  
5 expert on the system pursuant to *Evidence Code* section 801. Therefore, the court had  
6 every right to consider his qualifications and determine the weight to be given to his  
7 testimony as the foundation for the evidence presented, which established the City's  
8 compliance with *Vehicle Code* section 21455.5(b).

9         Appellant contends that People's Exhibit 4 detailing the Santa Ana Police  
10 Department's compliance with the statutory requirements for implementing an automated  
11 traffic enforcement system is inadmissible. However, since People's Exhibit 4 related to  
12 the installation of the automated traffic enforcement system in the City, it had a tendency  
13 in reason to prove a disputed fact that is of consequence to the determination of the  
14 action. Thus, People's Exhibit 4 was properly admitted as relevant evidence pursuant to  
15 *Evidence Code* section 210.

16         Appellant also argues that People's Exhibits 3 and 4 should be precluded as  
17 hearsay evidence. Even if considered a statement offered for the truth of the matter, and  
18 therefore hearsay, the documents qualify for the official records exception to the hearsay  
19 rule pursuant to *Evidence Code* section 1280. Evidence admissible under the official  
20 records exception is also admissible under *Evidence Code* section 1271, the business  
21 records exception. Unlike the business records exception, however, the official records  
22 exception permits the court to admit an official record without requiring a declaration or  
23 a witness to testify if the court takes judicial notice or if sufficient evidence shows the  
24 record was prepared in such a manner as to assure its trustworthiness.

25         The document presented in People's Exhibit 4 was prepared by and within the  
26 Santa Ana Police Department in the course and scope of a public employee. In addition,  
27 the document was prepared at or near the time of the introduction of the City's automated  
28 traffic enforcement system in order to detail the actions taken by the City to comply with

1 statutory requirements for such a system. Accordingly, the Santa Ana Police  
2 Department, a public police agency, serving as the source of information and method and  
3 time of preparation confirms the trustworthiness of the document, and was rightfully  
4 admitted into evidence by the underlying court. Regardless, even if Exhibit 3 was not  
5 properly admitted, as discussed below, the language of Vehicle Code section 21453(a)  
6 does not require the prosecution to establish as part of its prima facie case that the  
7 statutory notice requirements of Vehicle Code section 21455.5 have been met. *Cf.*  
8 *California Vehicle Code* section 40803(b) (prosecution must establish as part of its prima  
9 facie case that testimony or evidence is not based on a speedtrap.)

10 In regard to Exhibit 3, this signed declaration was properly admitted under  
11 Evidence Code section 1271, the business records exception, and was also admissible  
12 under the official records exception pursuant to Evidence Code section 1280. Even  
13 though the records were prepared by the City's agent, Redflex, the sources of  
14 information and preparation of the documents indicate its trustworthiness. *Evidence*  
15 *Code* section 195 defines a public employee as an officer, agent or employee of a public  
16 entity, and therefore documents prepared by Redflex may be imbued with the  
17 trustworthiness of a public police agency so long as it is functioning as an agent of the  
18 government entity. See *Imachi v. DMV* (1992) 2 Cal.App.4<sup>th</sup> 809, 816-817  
19 (trustworthiness indicia supplied by fact that private lab technician, acting on behalf of  
20 law enforcement agency, was reporting first hand observations as well as presumption of  
21 official duty regularly performed, citing *Evidence Code* section 664). Here, the officer's  
22 testimony established Redflex was acting as an agent for the City, and meets the chief  
23 foundation of the special reliability granted official and business records: that they are  
24 based on first hand observation of someone whose job it is to know the facts recorded.  
25 Redflex was acting as an agent for the City, and the admitted records possessed the  
26 special reliability granted official and business records. Thus, the evidence was not  
27 inadmissible hearsay and was properly admitted by the court.

28

1 As detailed herein, the evidence and testimony presented on behalf of the People  
2 in the above-captioned matter provided sufficient foundation, and was thus properly  
3 admitted into evidence by the underlying court.

4 C. *ALTHOUGH NOT REQUIRED AS PART OF THE PRIMA FACIE CASE,*  
5 *SUBSTANTIAL EVIDENCE OF COMPLIANCE WITH VEHICLE CODE*  
6 *SECTION 21455.5(b) WAS PRESENTED TO AND ADMITTED BY THE*  
7 *UNDERLYING COURT*

8 The language of Vehicle Code section 21453(a) does not require the prosecution  
9 to establish, as part of its prima facie case, that the statutory notice requirements of  
10 Vehicle Code section 21455.5 have been met. *Cf. California Vehicle Code* section  
11 40803(b) (prosecution must establish as part of its prima facie case that testimony or  
12 evidence is not based on a speedtrap.) Further, although the City has clearly complied  
13 with the notice requirements of Vehicle Code section 21455.5, there is no evidence that  
14 the Legislature intended that the appropriate remedy for non-compliance should result in  
15 a dismissal or the exclusion of evidence, unlike the exclusionary remedies available in  
16 speed laws. See, *Vehicle Code* section 40803. The docket indicates the court found  
17 Defendant guilty after reviewing in open court the 12-second video, which depicted the  
18 Appellant committing the violation. Court Docket, p. 4, line 12. Clearly, the weight of  
19 the evidence showed that Appellant was guilty of the underlying violation.

20 Regardless, in the underlying trial, substantial evidence was admitted into  
21 evidence that confirmed the City's compliance with the warning notice requirement of  
22 *Vehicle Code* section 21455.5(b). Specifically, *Vehicle Code* section 21455.5(b) requires  
23 that, "Prior to issuing citations under this section, a local jurisdiction utilizing an  
24 automated traffic enforcement system shall commence a program to issue only warning  
25 notices for 30 days." People's Exhibit 4 presented documentary evidence that, "Prior to  
26 issuing citations, the city of Santa Ana initiated a warning period that began May 18<sup>th</sup>  
27 2003 and concluded June 30<sup>th</sup> 2003. This warning period lasted 44 days, exceeding the  
28 statutory requirement of 30 days."

1 Appellant contends that this is not substantial evidence to support the underlying  
2 court's finding of compliance with the warning notice requirement because the statement  
3 does not specify the intersection the warning notices applied to. However, upon analysis  
4 of the language above, it is clear that the statement meets the requirements of *Vehicle*  
5 *Code* section 21455.5(b), which simply requires that warning notices be issued for 30  
6 days prior to commencement of the system. There is no requirement that the warning  
7 notices be issued at a particular intersection, so it is not necessary to specify the  
8 intersection. This appears to be another attempt by the Appellant to argue that the  
9 warning notices must be issued at each intersection, which the City has already disproved  
10 as detailed above. However, even if it was relevant to know the exact intersection, the  
11 City only had equipment at one intersection at the time of issuing the warning notices for  
12 the implementation of its automated traffic enforcement system.

13 The evidence presented on behalf of the People was substantial and sufficiently  
14 depicted the City's compliance with the warning notice requirement found in *Vehicle*  
15 *Code* section 21455.5(b), which is why the underlying court properly admitted the  
16 testimony and exhibits into evidence.

#### 17 **IV. CONCLUSION**

18 Appellant does not present any argument that he did not violate *Vehicle Code*  
19 section 21453(a) for driving through a red light. Rather, Appellant is attempting to avoid  
20 taking responsibility for his actions by presenting technical arguments regarding the  
21 City's warning notices. However, as detailed herein, the City complied with all of the  
22 statutory requirements for the implementation of an automated traffic enforcement  
23 system and, regardless, the weight of the evidence proved that Appellant was guilty.

24 Based on the foregoing arguments, the CITY OF SANTA ANA respectfully  
25 requests that the Appellate Division uphold the ruling of the underlying court as  
26 reasonable and legitimate by DENYING Appellant's instant appeal of the subject  
27 automated traffic enforcement system citation.

28

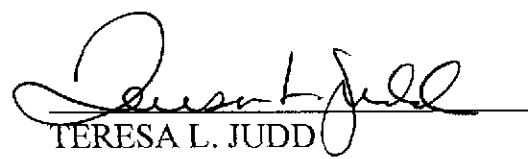


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Respectfully submitted,

JOSEPH W. FLETCHER  
City Attorney

DATED: February 10, 2010



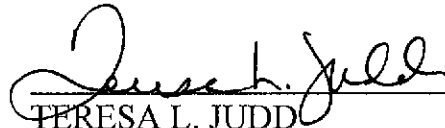
TERESA L. JUDD  
Deputy City Attorney  
Counsel for Amicus Curiae,  
CITY OF SANTA ANA

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**CERTIFICATE OF WORD COUNT**  
**(Cal. Rules of Court, rule 8.883(b)(1))**

The text of this petition consists of 3,730 words, as counted by the Microsoft Office Word 2007 word-processing program used to generate the brief.

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

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

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

On February 10, 2010, I served the foregoing document scribed as:  
**APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE** in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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

Anthony Rackauckas  
Orange County District Attorney  
P.O. Box 808  
Santa Ana, CA 92701

Clerk of the Court  
ORANGE COUNTY SUPERIOR COURT  
700 Civic Center Drive West  
Santa Ana, CA 92701

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

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

Executed on February 10, 2010 at Santa Ana, California.

  
\_\_\_\_\_  
JEANNETTE M. PALMA