

*filed 6-23*

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**  
9 **COUNTY OF ORANGE, WEST JUSTICE CENTER**  
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11 PEOPLE OF THE STATE OF CALIFORNIA,  
12  
13 Plaintiff,  
14 vs.  
15 JONATHAN E [REDACTED] et. al,  
16 Defendants.  
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} CASE Nos.: LA046249PE, LA046299PE,  
LA045864PEA, LA046208PE, LA046455PE,  
LA046246PE, LA046501PE, LA046696PE,  
LA046124PE, LA046665PEA, LA047279PE,  
LA046850PE, LA046835PE, LA045763PE,  
LA045842PE, LA047028PE, LA047082PE,  
LA046737PE, LA044977PE  
} RESPONDENT'S OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS  
FOR INADEQUATE YELLOW CHANGE  
INTERVALS PER V.C. 21455.7

18 SET FOR:  
Date: June 29, 2016  
19 Time: 1:30 p.m.  
Department: W7  
20

21 TO THE ABOVE ENTITLED COURT AND TO ALL PARTIES HEREIN AND  
22 THEIR ATTORNEY OF RECORD, SCOTT R. BALL:

23 PLEASE TAKE NOTICE that Respondent hereby submits the following  
24 Opposition to Defendants' Motion to Dismiss for Inadequate Yellow Change Intervals per  
25 V.C. 21455.7:

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1 **I. ARGUMENT**

2 **A. INTRODUCTION**

3 These cases involve a single contention by Defendants. They contend that they  
4 should not have been cited for red light camera violations because the City of Los  
5 Alamos set the duration of the yellow light 0.28 seconds too short.

6 **B. THE FACTS**

7 There is no dispute as to the facts. The intersection in question is Katella Avenue  
8 at Bloomfield Street. All of the Defendants were cited going Westbound on Katella. The  
9 yellow light duration is 4.02 seconds. That duration exceeds the minimum 3.9 seconds  
10 required if traffic approaching the intersection is 40 miles per hour or less. It is  
11 undisputed that traffic approaching the intersection is 40 miles per hour if traffic  
12 approaching the intersection in both directions is considered. It is likewise undisputed  
13 that the speed of traffic approaching the intersection is 41 miles per hour if the approach  
14 speed in only the westbound direction is considered. If approach speed in only the  
15 westbound direction is considered, the minimum yellow duration would have to be 4.3  
16 seconds. If the yellow duration is deemed to be too short, those defendants whose  
17 vehicles entered the intersection less than .28 seconds before the light turned red will be  
18 innocent. Of course, those who entered the intersection .29 seconds or more after the light  
19 turned red would still be guilty.<sup>1</sup>

20 **C. LOS ALAMITOS PROPERLY USED THE APPROACH**  
21 **SPEED IN BOTH DIRECTIONS IN DETERMINING**  
22 **YELLOW LIGHT DURATION**

23 Defendants argue that the Los Alamos yellow light duration was erroneous

24 \_\_\_\_\_  
25 <sup>1</sup> For example, the light turns yellow, then red. A defendant who enters the intersection  
26 more than .28 seconds after the light turned red is not affected by a yellow light duration that is  
27 irrelevant to his or her guilt. In the instant cases, one driver (C[REDACTED]) entered the intersection 20.3  
28 seconds after the light turned red, and a majority entered it more than .28 seconds after it turned  
red. Only Defendants C[REDACTED], D[REDACTED], D[REDACTED], G[REDACTED], Kim [REDACTED], M[REDACTED] and R[REDACTED]  
entered the intersection between 4.02 seconds and 4.3 seconds after it turned red. The remaining  
Defendants would be subject to prosecution even if the Motion to Dismiss were meritorious.

1 because, according to their counsel, the City erroneously utilized the 85<sup>th</sup> percentile speed  
2 surveys in both directions rather than just in the direction of travel for which they were  
3 cited. Defendants cite California Vehicle Code section 21455.7, which mandates use of  
4 the California Manual on Uniform Traffic Controls Devices (“MUTCD”) for determining  
5 minimum yellow light durations at intersections with red light cameras, and mentions  
6 “designated approach speeds provided in the California Manual on Uniform Traffic  
7 Control Devices.” However, the MUTCD section dealing with yellow light duration does  
8 not specify whether yellow light duration is to be determined using approach speeds from  
9 one direction or both directions. In fact, section 4d.26 does not refer to approach speed at  
10 all. Rather, it defers to “engineering practices” as well as 85<sup>th</sup> percentile speed in  
11 determining yellow light duration.

12 Former Los Alamitos City Traffic Engineer Ruth Smith, a certified Professional  
13 Traffic Planner and a Professional Engineer, testified, in cases heard by this court and this  
14 Commissioner on May 12, 2016, that in her professional opinion, it is appropriate under  
15 the MUTCD to consider approach speed for traffic approaching an intersection in **both**  
16 directions of travel in determining the 85<sup>th</sup> percentile speed for purposes of setting yellow  
17 light duration. She further testified that it is common practice in Los Alamitos as well as  
18 in other cities she is familiar with, to utilize the combined 85<sup>th</sup> percentile speeds in  
19 determining yellow light duration.<sup>2</sup>

20 The California Manual for Setting Speeds provides guidance for determining the  
21 85<sup>th</sup> percentile speed which is utilized in determining yellow light duration. It says:

22 The 85th percentile speeds may differ considerably by direction at some  
23 locations. Such conditions are usually caused by relatively heavy  
24 development on one side of the road. Next to the development, motorists  
25 will tend to drive slower.

26 On divided highways with independent alignments, the zone speeds should

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27 <sup>2</sup> Counsel for the City and for Defendants have agreed that the Court may consider Traffic  
28 Engineer Smith’s testimony in the prior proceedings, as well as the testimony of Defendants’  
expert, as if they had testified herein, in deciding this case. Those cases include case numbers  
LA044443PE, LA045764PE, LA044422PE, LA044735PE and LA044242PE, all of which are  
currently subject to Defendants’ Petition for Writ of Mandate in the Appellate Division.

1 conform to the 85th percentile speed in each direction, even though this may  
2 require zoning for different speeds in opposite directions.

3 On undivided roadways, and divided roadways without independent  
4 alignments, the zones in opposite directions should be the same for clarity  
5 for the driver and law enforcement purposes. If there is a difference between  
6 the 85th percentile speeds of 5 mph or more in the opposing directions, the  
7 data from both directions can be averaged to obtain one 85th percentile or  
8 the higher 85th percentile may be used to set the limit.

9 Traffic Engineer Smith testified that Katella Avenue falls into the latter category.  
10 That is, it is not a divided roadway with independent alignments, and that the 85th  
11 percentile speed in each direction is within 5 miles per hour. Thus, the speed in both  
12 directions may be averaged to obtain the 85th percentile, as is standard practice in the  
13 jurisdictions she is familiar with. Defense counsel's attempt to discredit the Manual for  
14 Setting Speed Limits as a source of determination is inapposite, given that: 1) speeds and  
15 speed limits are crucial in determining yellow light duration; and 2) that Manual is the  
16 only detailed source of information adopted in California that specifies how to determine  
17 the 85th percentile speed. Since the 85th percentile speed was properly determined to be  
18 40 miles per hour, the minimum yellow light duration was 3.9 seconds. Thus the 4.02  
19 second duration seconds was more than a second longer than the minimum.

20 **IV. CONCLUSION**


21 The City of Los Alamitos, like most cities, properly used the approach speed in  
22 both directions in determining the speed of travel and the consequent yellow light  
23 duration. Defendants are asking this Court to establish new law, which should properly be  
24 done (if at all) at the appellate level. The MUTCD is silent as to whether approach speed  
25 should be used, and if so, whether it should be in one direction or both directions  
26 approaching an intersection. The Caltrans Manual on Setting Speed Limits provides  
27 compelling guidance for situations like that here, utilizing the approach speed in both  
28 directions. Defendants' Motion to Dismiss should be denied.

Even if this Court were to determine that the yellow light duration at the  
intersection in question was .028 seconds too short, that would not mandate dismissal of  
all of the cases since the majority of the Defendants were not affected by the difference.

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DATED: June 23, 2016

Respectfully Submitted,  
WALLIN, KRESS, REISMAN & KRANITZ, LLP

By:   
CARY S. REISMAN  
City Attorney  
City of Los Alamitos

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, my business address is 2800 28th Street, Suite 315, Santa Monica, California 90405.

On June 23, 2016, I served the foregoing document described as: **RESPONDENT'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR INADEQUATE YELLOW CHANGE INTERVALS PER V.C. 21455.7** on the interested parties in this action by sending true copies to:

Scott R. Ball  
Law Offices of Scott R. Ball  
Attorney for Defendants

BY U.S. MAIL. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same date with postage thereon fully prepaid at Santa Monica, 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 the date of deposit for mailing in affidavit.

BY ELECTRONIC CORRESPONDENCE TRANSMISSION: I sent a copy of such document to the e-mail address: attorneyscottball@gmail.com.

BY PERSONAL SERVICE. I caused such document to be hand delivered to the addressee at the Westminster courthouse prior to the hearing.

BY OVERNITE EXPRESS. I personally delivered such envelope to an Overnight Express drop box in Santa Monica, California 90405, and specified next business day delivery. Executed on \* at Santa Monica, California.

BY FACSIMILE. I faxed such document to the addressee at the facsimile number listed for each addressee to:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 23, 2016 at Santa Monica, California.

  
Kathy Pratt )