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April 18, 2012

Chief Justice Tani Gorre Cantil-Sakauye  
Associate Justices Baxter, Chin, Corrigan,  
Liu, Kennard, Werdegar  
CALIFORNIA SUPREME COURT  
350 McAllister Street  
San Francisco, CA 94102

Re: *People v. Borzakian*; Appeal No.: B229748  
Opposition to Request for Depublication

To the Chief Justice and the Associate Justices of the California Supreme Court:

I am the defendant and the attorney of record in *People v. Borzakian*. The purpose of this letter is to respectfully request that the Court reject Mr. Litvak's request to depublish *People v. Borzakian*.

In *People v. Borzakian*, I challenged my conviction based on the prosecution's allegation that I failed to stop at a red light signal at an intersection equipped with an automated red light enforcement system. Over my multiple objections and my motion in limine, the trial court improperly admitted hearsay testimony of an unqualified witness (a police officer with no personal knowledge of the alleged violation nor a qualified witness under the business record exception) in order to establish the evidentiary foundation for the admission of the red light camera evidence (photos, video, maintenance logs, mailing certification).

The Court of Appeal, in a lengthy and comprehensive 25-page published Opinion, reversed my conviction based on its finding that the testifying officer was not competent to lay the necessary foundation for the evidence and, as a result, there was a "total lack of evidence to support the Vehicle Code violation in question."

Mr. Litvak's depublication request should be rejected for the following reasons:

The Court's Opinion in *People v. Borzakian* sends a clear message that circumventing the rules of evidence to aid in the convenient production of "acceptable" hearsay to garner expedient convictions will not be tolerated.

This case is not "fact-bound". The trial court's own settled statement speaks volumes about the routine practice of unlawfully admitting photo red light evidence without proper foundation. The trial court wrote in the settled statement:

The People have never been required to have Redflex employees such as the custodian of records or the field service technicians present in court in order for the People's exhibits to be admissible.

This is literally an admission by the trial court that what was done to me in *People v. Borzakian*, was being done to every other litigant that appeared before this trial court.

Also the trial court's statement is noteworthy because what the trial court is saying is that it is acceptable for the trial court to continue its practice of not applying the Rules of Evidence, because it has not been told otherwise. It is clear that unless a higher court compels the trial court to follow the rules, it will continue to admit evidence contrary to laws of this state for the purpose of expedience or, as stated in the amicus brief of Redflex (company providing automated red light evidence to the police department), expedient disposal of these cases. This published Opinion will end this plainly unlawful practice.

I have been in contact with counsel for *People v. Goldsmith* and *People v. Khaled*, as well as many other attorneys who have faced virtually identical challenges in traffic courts in various counties. The prosecution of my case is typical of how these automated red light cases are being handled by trial courts across this state. As a former public defender and an officer of the Court, I felt compelled to bring this unlawful prosecution for appellate review. I did not undertake this monumental task for my personal or pecuniary benefit. I did so because what was done to me was and is still being done to most litigants who decide to challenge their automated red light tickets by way of a trial.

By not depublishing this Opinion, the routine practice of traffic courts of admitting photographic “evidence” without foundation in automated red light cases will end. Furthermore, the Opinion will end this systematic flaw in traffic cases and will force the prosecution to meet its evidentiary burden and establish lawful foundation for evidence it seeks to admit.

The Court’s well reasoned opinion should remain published pursuant to California Rules of Court, Rule 8.1105(c) as it thoroughly explains an existing rule of law (CRC 8.1105 (c)(3)), advances clarification/construction of the statutory scheme governing evidence produced by automated red light systems (CRC 8.1105 (c)(4)), addresses an apparent conflict in the law (CRC 8.1105 (c)(5)), and involves a legal issue of continuing public interest (CRC 8.1105 (c)(6)).

**CRC 8.1105(c)(3): Modifies, explains, or criticizes with reasons given, an existing rule of law.**

This Opinion explains in great detail, with reasons given, the law on “Infractions and Settled Statements.” In its comprehensive Opinion, the Court expended considerable time discussing, at length, the deficiencies of the settled statement prepared in this case, the law on settled statements, and the consequences associated with a judicial officer’s failure to comply with the California Rules of Court governing the preparation of the settled statement. There is no other published opinion which extensively explains this rule of law in such a clear and comprehensive manner. There is also no other published case interpreting/applying the current version of the California Rules of Court governing infraction appeals.

**CRC 8.115(c)(4): Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule.**

This Opinion clarifies Evidence Code section 1271 - business record exception with regard to admitting records produced by automated red light photo camera vendors.

**CRC 8.1105(c)(5): Addresses or creates an apparent conflict in the law.**

Currently trial courts allow police officers to stand in for the custodians of records of private companies and to use hearsay testimony to establish foundation for red light camera evidence. The admissibility of this evidence has been challenged by appeal and has resulted in conflicting published opinions including

*People v. Borzakian*, *People v. Goldsmith* (2012) 203 Cal.App.4th 1515 - which upheld the admission of red light camera evidence, and *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1 - reversed admission of red light evidence.

The published Court Opinion also clarifies the issue of whether Evidence Code sections 1552 and 1553 shift the burden of refuting the accuracy and correctness of computer evidence to the Defendant. This issue is a very important issue which is not restricted to only automated red light cases, rather its impact is extensive, being relevant in any trial in this state in which a party wishes to enter into evidence photo or video evidence. The Court held that these Evidence Code sections only serve to establish that what was printed is an accurate copy of what is on a computer screen. Importantly, the Court wrote that “We disagree that the presumptions set forth in Evidence Code section 1552 and 1553 suffice to carry the people’s burden.”

The only published cases regarding Evidence Code section 1553 are Superior Court Appellate Division cases, and those Opinions are inconsistent with this Court’s ruling in this case. These cases stand for the proposition that Evidence Code section 1553 established a presumption that computer-generated evidence is accurate and therefore shifts the burden of proving inaccuracy to the defendant. In light of this Court’s Opinion, the Opinions of both these Appellate Divisions cases are wrong. *Borzakian* will essentially overrule those cases and set forth the correct interpretation of the statute, which will no doubt be used as precedents not only in infraction cases, but in all civil and criminal cases, where mis-interpretation of the law could have significant affect.

Without the *Borzakian* case, trial courts will continue to place the burden on defendants to prove the accuracy and correctness of computer evidence mis-citing Evidence Code sections 1552 and 1553.

**CRC 8.1105(c)(6): Involves a legal issue of continuing public interest.**

Automated red light programs and the handling of these cases by the trial courts have evoked great public interest. The Metropolitan News - Enterprise, the Los Angeles Daily Journal and the Orange County Daily Journal have all printed news stories about the *Borzakian* case. There is no question this issue involves an issue of continuing public interest.

HERSH, MANNIS & BOGEN, L.L.P.

THE SUPREME COURT OF CALIFORNIA

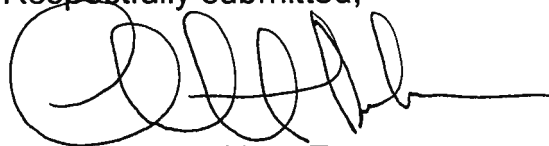
April 18, 2012

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Furthermore, I do not believe that Mr. Litvak is correct in stating that his law firm, a private law firm, represents the People of California.

For these reasons, I respectfully request that this Court deny Mr. Litvak's depublication request.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Annette Borzakian, Esq.  
Appellant and Defendant

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.**

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

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**PROOF OF SERVICE OF  
OPPOSITION TO REQUEST FOR DEPUBLICATION**

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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 **COUNTY OF LOS ANGELES** ) **ss.**

- 5 1. At the time of service I was over 18 years of age and **not a party to this action.**
- 6 2. My residence or business address is  9150 Wilshire Boulevard, Suite 209, Beverly Hills, CA 90212-3429;  Beverly Hills Express, 8671 Wilshire Blvd., Beverly Hills, CA 90211.
- 7 3.  The fax number or electronic notification address from which I served the
- 8 documents is:
- 9 4. On April 19, 2012, I served the following **document(s)**:

10 **OPPOSITION TO REQUEST FOR DEPUBLICATION**

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

12 a. Name of person served:

13 **SEE ATTACHED SERVICE LIST**

14 b.  (Complete if service was by personal service, mail, overnight delivery, or messenger service.) Business or residential address where person was served:

15 **SEE ATTACHED SERVICE LIST**

16 c.  (Complete if service was by fax or electronic service.)

17 (1) Fax number or electronic notification address where person was served:

18 (2) Time of service: \_\_\_\_\_

19 d.  The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

- 20 6. The document(s) were served by the following means:

21 a.  **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5.

22 (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening.

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(2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

b.  **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 (*specify one*):

(1)  I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2)  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.

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.

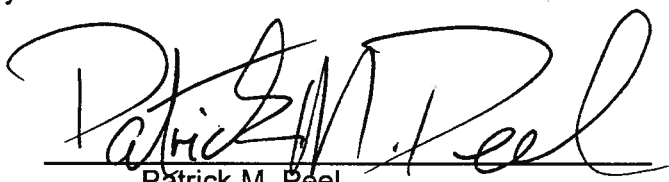
c.  **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d.  **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)

e.  **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date: April 19, 2012

  
Patrick M. Peel



**SERVICE LIST**

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