

SA 151929 PE

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUL 2 - 2010

ALAN CARLSON, Clerk of the Court

BY *J*

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6 Attorney for Defendant

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

10 PEOPLE OF THE STATE OF  
11 CALIFORNIA

12 PLAINTIFF

13 v.

14 [REDACTED] CALHOON

15 [REDACTED] CHAPMAN

16 [REDACTED] COLLINS

17 JAMES F [REDACTED]

18 [REDACTED] GREENE

19 [REDACTED] SAAVEDRA

20 [REDACTED] TRUONG

21 DEFENDANTS

) Case Nos. SA151929PE  
) SA154656PE  
) SA153758PE  
) SA154550PE  
) SA154097PE  
) SA154608PE  
) SA152672PE  
)  
) DEFENDANT'S MOTION TO  
) DISQUALIFY SANTA ANA CITY  
) ATTORNEY AS PROSECUTOR FOR THE  
) PEOPLE OF THE STATE OF  
) CALIFORNIA.  
) GOVERNMENT CODE §§100; 72193;  
) 26500; 41803.5(a)  
) PENAL CODE §§ 1424(b); 19.7;  
) 684  
)  
) Date: July 21, 2010  
) Time: 3:00 PM  
) Dept. C52

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1 TO THE ABOVE-ENTITLED COURT:

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3 The defendant in the above-entitled action moves this Court  
4 to exclude the City of Santa Ana as a party in this action and  
5 representative of The People of the State of California.

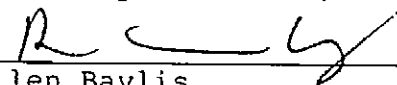
6 This motion is based on the following grounds:

- 7 1. The city of Santa Ana is not a party to the action and  
8 its representative the Santa Ana City Attorney are not  
9 authorized to act as prosecutor for the People of the  
10 State of California.
- 11 2. The Santa Ana City Attorney as representative of the  
12 City of Santa Ana has an actual or perceived conflict  
13 of interest which prevents him from impartially  
14 representing the People of the State of California
- 15 3. The city of Santa Ana Police Department is not a party  
16 to the action and its representative the Santa Ana  
17 City Attorney, are not authorized to act as prosecutor  
18 for the People of the State of California.

19  
20 This motion will be based on the attached memorandum of  
21 points and authorities, all papers filed and records in this  
22 action, the attached declaration, evidence taken at the hearing  
23 on this motion, and argument at that hearing.

24  
25 Date: 7-1-10

Respectfully submitted,

26   
27 R. Allen Baylis,  
28 Attorney for Defendant

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SA 151929PC

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MEMORANDUM OF POINTS AND AUTHORITIES

THE PEOPLE OF THE STATE OF CALIFORNIA IS THE PLAINTIFF AND REPRESENTATIVE OF THE PEOPLE IN THIS CASE.

Penal Code § 684, provides, "A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense." (See also Government Code § 100.) By law, the People are thus the real party in interest in every criminal prosecution. "In criminal matters, the parties are the defendant and the People of California. The arresting law enforcement agency is not a party." (People v. Punzalan (2003) 112 Cal.App.4th 1307, 1310; see also Department of Corrections v. Superior Court (1988) 199 Cal.App.3d 1087, 1092 n. 2: "The adverse party in these criminal proceedings is the People of the State of California, not... a third party...".) Not even a victim of crime has standing to challenge judicial determinations made with regard to a criminal defendant. (Dix v. Superior Court (1991) 53 Cal.3d 442, 454.) (See also People v. Parriera (1990) 273 Cal.App.2d 275, 282) Neither the Legislature nor the Judicial Council has authorized such third party participation, and there is no compelling reason for this court to do so.

The Court in People v. Dehel stated:

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1 "The district attorney of each county is the public  
 2 prosecutor, vested with the power to conduct on behalf  
 3 of the People all prosecutions for public offenses  
 4 within the county. (Gov.Code, § 26500) Subject to  
 5 supervision by the Attorney General (Cal. Const., art.  
 6 V, § 13; Gov.Code, § 12550), therefore, the district  
 7 attorney of each county independently exercises all  
 8 the executive branch's discretionary powers in the  
 9 initiation and conduct of criminal proceedings. *People*  
 10 *v. Dehle* (2008) 166 Cal.App4th 1380, 1387 (Internal  
 11 citations omitted)

12  
 13 Government Code §26500 states:

14 The district attorney is the public prosecutor, except as  
 15 otherwise provided by law.

16 The public prosecutor shall attend the courts, and within  
 17 his or her discretion shall initiate and conduct on behalf of  
 18 the people all prosecutions for public offenses.

19  
 20 Courts have held that the District Attorney has discretion  
 21 as to whether or not to attend and prosecute traffic infraction  
 22 trials. (See *People v. Carlucci* 23 Cal.3d 249, *People v. Daggett*  
 23 206 Cal.App.3d Supp. 1, and *People v. Kottmeier* 220 Cal.App3d  
 24 602) However, no case has held that a City Attorney can step in  
 25 to assume the prosecution of traffic infraction trials on an *ad*  
 26 *hoc* basis.

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1 The Attorney General in response to a request from the Los  
2 Angeles District Attorney for clarification of the District  
3 Attorney's duties relating to municipal code violations stated  
4 the following:

5 It is the duty of the district attorney to file  
6 complaints and prosecute misdemeanor violations of  
7 state statutes in incorporated or chartered cities of  
8 the county when there is no city prosecutor or officer  
9 charged with the duty of prosecuting misdemeanor  
10 offenses, or when the city prosecutor or such officer  
11 is disqualified or for some reason is unable to  
12 prosecute such actions or when such statutes are not  
13 being uniformly or adequately enforced. As to  
14 prosecutions of city ordinances, that is a municipal  
15 affair; and if the city prosecutor or such officer is  
16 to prosecute all cases of this character none can  
17 remain which are to be conducted by the district  
18 attorney. (20 Op.Atty.Gen. 234)

19  
20 ABSENT ESTABLISHMENT OF A CITY PROSECUTOR'S OFFICE BY CITY  
21 CHARTER, GOVERNMENT CODE §72193 DOES NOT AUTHORIZE CITY  
22 ATTORNEYS TO PROSECUTE VIOLATIONS OF STATE LAW.  
23

24 Government Code §72193 reads as follows:

25 72193. Whenever the charter of any city  
26 creates the office of city prosecutor, or  
27 provides that a deputy city attorney shall  
28 act as city prosecutor, and charges such

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1 prosecutor with the duty, when authorized by  
2 law, of prosecuting misdemeanor offenses  
3 arising out of violations of state laws, the  
4 city prosecutor may exercise the following  
5 powers:

6 (a) The city prosecutor shall prosecute  
7 all such misdemeanors committed within the  
8 city, and handle all appeals arising from  
9 it. The city prosecutor shall draw  
10 complaints for such misdemeanors, and shall  
11 prosecute all recognizances or bail bond  
12 forfeitures arising from or resulting from  
13 the commission of such offenses.  
14

15 It is settled law that, absent specific authority  
16 pursuant to a city charter only the District Attorney  
17 has the authority to prosecute violations of state  
18 law. And, if the city has established a City  
19 Prosecutor's Office, it must prosecute all misdemeanor  
20 and infraction cases arising within the city.

21 "Here are two classes of cases which it is, or may  
22 become, the duty of the prosecuting attorneys to  
23 conduct on behalf of the people: First, those  
24 involving a violation of the state law or a county  
25 ordinance; second, those involving a violation of the  
26 city law (charter or ordinance). The prosecution of  
27 the first class of offenses cannot be said to be any  
28 part of the duty of the municipality. The offenses are

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1 created general state law or county ordinance, and are  
2 punishable under such law or ordinance whether  
3 committed within or without the limits of a  
4 municipality. The burden of so prosecuting is to be  
5 assumed by the state or the counties into which the  
6 state is, for governmental purposes, subdivided, and  
7 it has, in fact, always been so assumed in this  
8 state." *City of Merced v. County of Merced* (1966) 240  
9 Cal.App.2nd 763, 799, citing *Fleming v Hance* (1908)  
10 153 Cal 162 168 94 P 620 622 "The duties thus  
11 uniformly imposed upon county officers do not become  
12 municipal in character merely because they are to be  
13 exercised within the limits of a city. The prosecution  
14 of offenses against the state law or a county  
15 ordinance not being, then, a municipal duty, the  
16 Legislature cannot impose the cost of performing this  
17 function upon the city." *Merced* at 766-767.

18  
19 The Court in *People v. Menveg* confirmed that City  
20 Prosecutors are not authorized to prosecute state law  
21 offenses unless the city has established a City Prosecutors  
22 office and undertaken the responsibility of prosecuting all  
23 state law misdemeanor (and infraction) cases arising within  
24 the city. *People v. Menveg* 226 Cal.App.2d 569, 571-574

25  
26 Again citing the Attorney General's Opinion:

27 Some distinction should be made between  
28 violations of city ordinances and state penal laws.

1 The prosecution of violations of city ordinances is a  
2 municipal affair, and if the city prosecutor is to  
3 prosecute all cases of this character, none can remain  
4 which are to be conducted by the district attorney But  
5 the prosecution of offenses committed in violation of  
6 the state penal laws is a state affair. While a  
7 provision of a city charter may be paramount to state  
8 law as to municipal affairs, it is not paramount as to  
9 matters of state concern. (20 Op.Atty.Gen. 234, 236)

10  
11 The Santa Ana City attorney may point to Government Code  
12 §41803.5(a), which states:

13 **With the consent of the district attorney** of the  
14 county, the city attorney of any general law city or  
15 chartered city within the county may prosecute any  
16 misdemeanor committed within the city arising out of  
17 violation of state law. This section shall not be  
18 deemed to affect any of the provisions of Section  
19 72193.

20  
21 However, §41803.5(a) merely states that if a city is to  
22 establish a City Prosecutor's officer so as to take on the duty  
23 to prosecute violations of state law pursuant to §72193, it must  
24 first gain the consent of the District Attorney. This does not  
25 allow the City Attorney to prosecute state law violations on an  
26 ad hoc basis by simply getting the consent from the District  
27 Attorney. It is subject to the provisions of §72193.



1 There is clearly a distinction between prosecutions of  
2 violations of state law versus violations of municipal law.  
3 Where violations of state law are concerned, the state has an  
4 interest in assuring that state law is applied uniformly. This  
5 is accomplished by making the various County District Attorneys  
6 subordinate to the Attorney General. Allowing City Attorney's to  
7 prosecute violations of stat law would frustrate the  
8 constitutional and statutory measures put in place in order to  
9 assure uniform application of state law.

11 Penal Code §19.7:

12 Except as otherwise provided by law, all provisions of  
13 law relating to misdemeanors shall apply to  
14 infractions including, but not limited to, powers of  
15 peace officers, jurisdiction of courts, periods for  
16 commencing action and for bringing a case to trial and  
17 burden of proof.

19 Since Penal code §19.7 provides that the laws pertaining to  
20 misdemeanor also apply to infractions, Government Code §72193  
21 and Penal Code §684 must also apply to the prosecution of state  
22 law infractions arising within the city of Santa Ana.

24 THE CITY ATTORNEY CANNOT ACT AS PROSECUTOR FOR THE PEOPLE OF THE  
25 STATE OF CALIFORNIA UNLESS HE HAS BEEN DULY AUTHORIZED BY THE  
26 DISTRICT ATTORNEY AND TAKEN THE OATH OF OFFICE FOR THE POSITION  
27 OF DISTRICT ATTORNEY  
28

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1 In this matter, the District Attorney has chosen not to act  
 2 in the prosecution of the case. The District Attorney cannot  
 3 simply allow the City Attorney to step in to prosecute a case on  
 4 behalf of the People absent a formal agreement and swearing in  
 5 of the City Attorney as a Deputy District Attorney. In order for  
 6 the City Attorney to be legally authorized to act as prosecutor  
 7 for the People, he would have to have taken the oath of office  
 8 for the position of Deputy District Attorney pursuant to  
 9 Government Code §1363(a)(2). Additionally, a District Attorney  
 10 is deemed to be under the supervision of the Attorney General  
 11 (Govt. Code §12500). If the City Attorney were sworn in as a  
 12 Deputy District Attorney, he would then be subject to the  
 13 supervision of the Orange County District Attorney, and  
 14 ultimately, the Attorney General. There has been nothing  
 15 presented to this court to suggest that anyone in the Santa Ana  
 16 City Attorney's has met the requirements necessary to act as  
 17 prosecutor on behalf of the People of the State of California,  
 18 so as to be legally authorized to prosecute violations of state  
 19 law.

21 DISQUALIFICATION OF THE CITY ATTORNEY AS PROSECUTOR IS PROPER  
 22 DUE TO ACTUAL OR PERCEIVED CONFLICT OF INTEREST.

24 The California Supreme Court decision in *People v. Superior*  
 25 *Court (Greer)* (1977) 19 Cal.3d 255, stands for the proposition  
 26 that a government attorney, like a public prosecutor, must be  
 27 absolutely neutral. (Clancy 39 Cal.3d at pp. 746-747.) In *Greer*,  
 28 the defendants sought the disqualification of the district

2

1 attorney on the ground that a conflict of interest existed  
2 because the victim's mother was employed in the district  
3 attorney's office. (*Greer, supra*, 19 Cal.3d at p. 259.) Our  
4 Supreme Court affirmed the trial court's order disqualifying the  
5 district attorney because the prosecutor might have an  
6 "emotional stake" in the case that could "disturb his exercise  
7 of impartial judgment in pretrial and trial proceedings." *Id.* at  
8 p. 270.)

10 The *Greer* court's analysis of the disqualification issue  
11 was based upon the defendant's fundamental due process right not  
12 to be deprived of liberty without a fair trial and the  
13 prosecutor's obligation "to respect this mandate." (*Greer,*  
14 *supra*, 19 Cal.3d at p. 266.) "The prosecutor is a public  
15 official vested with considerable discretionary power to decide  
16 what crimes are to be charged and how they are to be prosecuted.  
17 [Citations.] In all his [or her] activities, his [or her] duties  
18 are conditioned by the fact that he [or she] "is the  
19 representative not of any ordinary party to a controversy, but  
20 of a sovereignty whose obligation is to govern impartially...  
21 and whose interest, therefore, in a criminal prosecution is not  
22 that it shall win a case, but that justice shall be done..."  
23 [Citations.]" (*Ibid.*; see *People v. Fierro* (1991) 1 Cal.4th 173,  
24 208 [3 Cal. Rptr. 2d 426, 821 P.2d 1302].)

26 In *Greer*, our Supreme Court also recognized that the  
27 requirement of prosecutorial impartiality arose from the  
28 prosecutor's discretionary powers. "[I]t is precisely because

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1 the prosecutor enjoys such broad discretion that the public he  
2 [or she] serves and those he [or she] accuses may justifiably  
3 demand that he [or she] perform his [or her] functions with the  
4 highest degree of integrity and impartiality, and with the  
5 appearance thereof." (Greer, supra, 19 Cal.3d at pp. 266-267.)  
6 Thus, the "advantage of public prosecution is lost if those  
7 exercising the discretionary duties of the district attorney are  
8 subject to conflicting personal interests which might tend to  
9 compromise their impartiality. In short, the prosecuting  
10 attorney "is the representative of the public in whom is lodged  
11 a discretion which is not to be controlled by the courts, or by  
12 an interested individual. ..." [Citation.]" (Id. at p. 267.)  
13 In *Hambarian v. Superior Court*, 27 Cal.4th 826, our Supreme  
14 Court also addressed the issue of prosecutorial neutrality. The  
15 court considered the merits of the defendant's motion to  
16 disqualify the district attorney's office on the ground that the  
17 district attorney had accepted the services of a forensic  
18 accountant who was compensated by the victim, the City of  
19 Orange. (Id. at p. 829.) Under Penal Code section 1424, a motion  
20 to disqualify a prosecutor on the ground of conflict of interest  
21 may not be granted unless "the evidence shows that a conflict of  
22 interest exists that would render it unlikely that the defendant  
23 would receive a fair trial." (Pen. Code, § 1424, subd. (a)(1).)  
24 The court recognized, as it did in Greer, that a public  
25 prosecutor is required to "act in an impartial manner" because  
26 he or she has "broad discretion over the entire course of the  
27 criminal proceedings ... ." (*Hambarian, supra*, 27 Cal.4th at pp.  
28 839-840.) Accordingly, the Hambarian court determined that the

1 proper test for a disqualifying conflict of interest under Penal  
 2 Code section 1424 is whether "the prosecutor's discretionary  
 3 decision making has been placed within the influence or control  
 4 of an interested party." (27 Cal.4th at p. 841, fn. omitted.)  
 5 Review of these California Supreme Court cases clarifies that a  
 6 public prosecutor may be disqualified if a case-by-case review  
 7 of the factual circumstances surrounding the claimed conflict of  
 8 interest indicates that "the prosecutor's discretionary decision  
 9 making has been placed within the influence or control of an  
 10 interested party" (*Hambarian, supra*, 27 Cal.4th at p. 841), or  
 11 is subject to "conflicting personal interests" (*Greer, supra*, 19  
 12 Cal.3d at p. 267). Thus, the test for a disqualifying conflict  
 13 of interest may be stated as follows: where the factual  
 14 circumstances in a case indicate that the public prosecutor's  
 15 discretionary decision making is not likely to be impartial, the  
 16 standard of neutrality has been violated and the prosecutor may  
 17 be disqualified.

18  
 19 The City of Santa Ana sought to intervene as a Real Party  
 20 in Interest in the appeal in *People v. Khaled*. The motion to  
 21 intervene was denied, but the Appellate Division allowed the  
 22 City to submit an Amicus brief in the case. The Santa Ana City  
 23 Attorney, in his Application for Leave to File Brief as Amicus  
 24 Curiae stated the City's interest as follows:

25 "The City has a unique interest in this matter  
 26 because the appeal presents a direct challenge to  
 27 the legality of the City's automated red light  
 28 photo enforcement camera system and procedures. As

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1 such, any decision by the Court will directly  
2 affect the City and its camera system. In fact,  
3 the underlying issue in this case is not only of  
4 great concern to the City, but also potentially  
5 affects other cities operating such systems."  
6

7 In this case, we have the Santa City Attorney, who  
8 represents the City and protects the red light photo enforcement  
9 program from attack, seeking also to prosecute defendants  
10 charged with running a red light based on evidence obtained  
11 through the use of its automated enforcement system. Given the  
12 mandate that a public prosecutor must remain free of the  
13 influence of third parties in the administration of justice, it  
14 is clear that the City Attorney has a real, not just apparent,  
15 conflict of interest in this case. While attempting to act as  
16 prosecutor for the State, the City Attorney is influenced in his  
17 prosecutorial discretion by an interested third party, The City  
18 of Santa Ana. This is further illustrated by the fact that the  
19 City Attorney has, up to this point, only attempted to intervene  
20 in red light camera cases; and only those cases where the  
21 defendant has retained this defense attorney. Clearly, the City  
22 Attorney's prosecutorial discretion is being exercised in a  
23 discriminatory manner.  
24

25 Additionally, the City has a strong financial interest in  
26 the prosecution of these cases. It must operate its system in  
27 such a way as to maintain a minimum number of convictions per  
28 month in order to avoid a revenue shortfall. This is necessary

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1 because, even though the City Attorney asserts that the contract  
2 with Redflex calls for a "flat fee" payment to Redflex, Section  
3 26(a) of the agreement allows for the renegotiation of the fee  
4 should the City fail to recover its cost of operating the system  
5 due to low conviction rates. Section 26 (a) reads as follows:

6 a. Beginning no less than six (6) months after the  
7 Operational Period commences following the  
8 installation of the last contracted for Redflex  
9 System, if the City determines it is unable to  
10 recover it's costs incurred in the Operation of  
11 the Redflex System as identified in Section 10-  
12 Compensation, based on a bi-annual review process  
13 to ensure received revenue provides for sufficient  
14 cost recovery, the City shall have the option to  
15 renegotiate the Compensation amount as listed in  
16 Section 10 of this agreement.

17  
18 This places the City in a position of operating the system,  
19 and the City Attorney in a position of prosecution of these  
20 cases, with a goal of maintaining a minimum level of revenue  
21 necessary to avoid causing discord with the contractor, and  
22 interested third party, Redflex.

23  
24 In applying the standards of the prosecutor's impartiality  
25 mandated by our Supreme Court in *Greer* to the facts presented in  
26 these cases, it becomes clear that the City Attorney has a  
27 conflict and is influenced by interested third parties.  
28

CONCLUSION

SA 151929PC

1  
2 In this case, the Santa Ana City Attorney is attempting to  
3 undertake the prosecution of a charge of violation of Vehicle  
4 Code §21543(a), a violation of a general state law. The City  
5 Attorney cannot lawfully represent the People of the State of  
6 California in this action.  
7

8 Additionally, the City of Santa Ana is not a party to this  
9 action but rather has a pecuniary interest in this defendant's  
10 conviction and universally higher conviction rates for AES  
11 Citations. As an advisor to the City of Santa Ana, City  
12 Attorney's scope of representation directly conflicts with the  
13 notion of prosecutorial neutrality to do justice by the exercise  
14 of discretionary decision making outside the influence of the  
15 interested entity (Santa Ana). This become perfectly clear when  
16 one considers the fact that the City of Santa Ana has a contract  
17 with Redflex Traffic Systems, Inc. to provide equipment and  
18 services in these AES cases. As such, the City Attorney must  
19 represent the City in negotiating the terms of such contracts,  
20 and represent the City in the event of a dispute regarding the  
21 contract. Furthermore, The City has a significant financial  
22 stake in seeing that defendant's in these AES cases are found  
23 guilty, given the fact that the city is obligated to pay Redflex  
24 nearly \$6000 per month for it's services in performance on the  
25 Santa Ana/Redflex contract. This conflict cannot be resolved  
26 ethically and as such in this case, and in all cases similarly  
27 situated, the City Attorney cannot impartially represent the  
28

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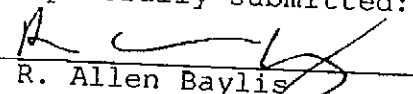


1 people of the State of California as a prosecutor seeking  
2 justice.

3  
4 The conflict of interest presented by the City Attorney  
5 acting a prosecutor for the People of the State of California is  
6 easily resolved. All that is necessary is to have the Orange  
7 County District Attorney fulfill his duty to prosecute as he  
8 certainly may do. While the District Attorney need not be  
9 present in all traffic infraction trials, where the defendant's  
10 right to a fair trial and due process are at risk, the court  
11 should either require that the District Attorney act as  
12 prosecutor or, in the interest of expeditious and simplified  
13 disposition of these infraction matters, conduct the trial  
14 without a prosecuting attorney. (See People v. Carlucci (1979)  
15 23 Cal.3d 249, 257)

16  
17 For all the foregoing reasons, this Court should grant  
18 defendant's motion and disqualify the city of Santa Ana's City  
19 Attorney as prosecutor for of these alleged violations of state  
20 law on behalf of the People of the State of California.

21  
22  
23 Dated 7-1-10

24 Respectfully submitted:  
25   
26 By: R. Allen Baylis  
27 Attorney for Defendant  
28

SA 151929PE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

THE UNDERSIGNED DECLARES AS FOLLOWS:

I AM EMPLOYED IN THE County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 9042 Garfield Ave., Suite 306, Huntington Beach, CA 92646, County of Orange, State of California.

On July 2, 2010, I served the following documents describe as:  
DEFENDANT'S MOTION TO DISQUALIFY SANTA ANA CITY ATTORNEY AS  
PROSECUTOR FOR THE PEOPLE OF THE STATE OF CALIFORNIA Citations:  
SA151929PE SA154656PE SA153758PE SA154550PE SA154097PE SA154608PE  
SA152672PE, Addressed as follows:

Santa Ana City Attorney's Office  
20 Civic Center Plaza M-29  
P.O. Box 1988,  
Santa Ana, CA 92702

Orange County District Attorney  
700 Civic Center Drive West  
Santa Ana, CA 92701

By Placing the true copies thereof enclosed in sealed envelope addressed as stated on the attached mailing list.

(BY MAIL) I caused such envelope(s) with postage fully prepaid thereon to be placed in the United States Mail at Huntington Beach, California.

(BY PERSONAL SERVICE) I caused such envelope to be hand-delivered to the address listed above.

(BY FACSIMILIE MACHINE) I caused the above-referenced document(s) to be transmitted to the above named person(s) at the following telecopier number:

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U. S. Postal Service on the same day in the ordinary Course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) 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 above is true and correct.

Executed on July 2, 2010 at \_\_\_\_\_, California.

\_\_\_\_\_  
R. Allen Baylis

R