

1 Brian T. Pedigo, State Bar No. 256439  
2 THE PEDIGO LAW CORPORATION  
3 7545 Irvine Center Drive, Suite 200  
4 Irvine, CA 92618  
5 Phone: (877) 274-2612  
6 Fax: (949) 61400766  
7 Brian@PedigoLaw.com

8 Attorney for Defendant, [REDACTED]

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF RIVERSIDE, MORENO VALLEY**

THE PEOPLE OF THE STATE OF CALIFORNIA,  
vs.  
[REDACTED],  
Defendant.

Case No.: 57536ND

**NOTICE OF MOTION FOR  
PRECLUSION OF TESTIMONY; FOR  
EXCLUSION OF EVIDENCE; OR IN THE  
ALTERNATIVE FOR DISCLOSURE AND  
MONETARY SANCTIONS;  
DECLARATION, POINTS AND  
AUTHORITIES**

COURT: 13800 Heacock Street, Moreno  
Valley, CA 92553

TO: PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, AND TO THE  
DISTRICT ATTORNEY FOR THE WITHIN-NAMED COUNTY:

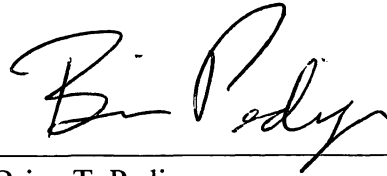
PLEASE TAKE NOTICE that on \_\_\_\_\_, 2011, at \_\_\_\_\_ .m. in the above-  
entitled court at 13800 Heacock Street, Moreno Valley, California, County of Riverside, Defendant  
will move the court for an order precluding the testimony of the citing police-officer witness, and for  
excluding introduction of any engineering and traffic survey, for the trial of the above-entitled case, or  
in the alternative, for an order for disclosure of discovery and other sanctions.

This motion is made on the ground that the People, upon having been served with an Informal  
Discovery Request under Penal Code Sections 1054 *et. seq.*, have failed and refused to respond to the  
same for at least 20 days.

1 This motion is based on the pleadings, records, and files in this action, the accompanying  
2 Declaration and Points and Authorities, and on oral and documentary evidence to be presented at the  
3 hearing on the motion.

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5 Dated: May 11, 2011

THE PEDIGO LAW CORPORATION

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9 Brian T. Pedigo  
Attorney for Defendant,

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THE PEDIGO LAW CORPORATION  
7545 Irvine Center Dr, Ste 200  
Irvine, CA 92618

1 **POINTS AND AUTHORITIES**

2 INTRODUCTION

3 In this traffic infraction case, the People have failed to comply with a “Proposition 115”  
4 discovery request under Penal Code Section 1054.5. The following argument will show that the  
5 provisions of Penal Code Sections 1054 through 1054.7 do indeed apply to traffic infraction cases,  
6 and that the Court should impose the sanction of preclusion of the police officer’s testimony and  
7 exclusion of any and all traffic and engineering surveys within the meaning of Vehicle Code Section  
8 40802(b), or, in the alternative, should order disclosure of the evidence requested by defendant in her  
9 Informal Discovery Request and require the district attorney or the citing police agency to pay  
10 monetary sanctions to defendant.

11 **ARGUMENT**

12 **I. THE PROVISIONS OF PENAL CODE SECTIONS 1054 THROUGH 1054.7**  
13 **APPLY TO INFRACTION PROCEEDINGS.**

14 Penal Code Sections 1054 through 1054.7 (as added by Proposition 115, effective June 6, 1990)  
15 provide for discovery “in criminal cases” (P.C. Section 1054(e)). This has been held to include  
16 misdemeanor prosecutions (*Hobbs v. Municipal Court* (1991) 233 Cal.App.3d 670, 284 Cal.Rptr.  
17 670.) It also includes infraction prosecutions by virtue of Penal Code Section 19.7, which states in  
18 pertinent part, “Except as otherwise provided by law, all provisions of law relating to misdemeanors  
19 shall apply to infractions...” Such exceptions do exist with respect to the right of trial by jury and the  
20 appointment of counsel (P.C. Section 19.6). However, no such provision exempts discovery laws from  
21 application to infraction proceedings. Penal Code Section 19.7 incorporates into infraction procedure  
22 all statutory law (and even constitutional law not per se applicable to infractions), absent an express  
23 statutory declaration to the contrary (*People v. Mathews*, 139 Cal. App.3d 537, 188 Cal. Rptr. 796  
24 (1983)). Thus, the provisions of Penal Code Sections 1054 through 1054.7 apply to infraction  
25 procedures.

26 Under Penal Code Section 1054.5, parties to criminal actions – including infractions – may  
27 engage in informal discovery. Pursuant to an “informal discovery request,” the defendant may request  
28 the People disclose, among other things, “Relevant written or recorded statements of witnesses or

1 reports of the statements of witnesses whom the prosecutor intends to call at trial” (P.C. Section  
2 1054.1(f)). This obviously includes, in traffic infraction matters, any written statements the officer(s)  
3 has made about the alleged violation, on his or her copy of the Notice to Appear, or elsewhere, at least  
4 if the officer will testify at trial. This also includes any engineering and traffic survey that will be used  
5 as evidence against the defendant in a radar case. Clearly such a survey is a “result of [a] physical ...  
6 examination, scientific tests, experiments, or comparisons that the prosecutor intends to offer in  
7 evidence at trial,” and, hence, explicitly falls within the purview of Penal Code Section 1054.1(f).

8 Is a universal police practice for officers to issue notices to appear for moving violations to  
9 write brief notes about the circumstances surrounding the alleged violation, including any admissions  
10 of the defendant, on the reverse side of the officers copy of the notice to appear. Most, if not all,  
11 officers refer to such notes when testifying in court about the alleged violation. These notes are the  
12 equivalent of a police report, but are not normally supplied to the defendant. Fortunately, Proposition  
13 115 has codified discovery procedures, which clearly apply to infractions. Just as it is essential in a  
14 misdemeanor case for an attorney preparing for trial to review the officers police report, it is essential  
15 in traffic infraction cases for the defendant to review the notes made by the officer. More importantly,  
16 such notes fall directly within the purview of Penal Code section 1054.1(f).

17 *A. A defendant in a traffic infraction case involving radar is entitled to discovery of a copy of*  
18 *any engineering and traffic survey that will be introduced against him or her at trial.*

19 This case involves the use of radar and, hence, in order for the prosecution to establish a prima  
20 facie case against the defendant, Vehicle Code section 408203(b) requires the prosecution to  
21 introduce a valid engineering and traffic survey into evidence at the trial to show that no evidence was  
22 obtained in violation of the speed trap prohibition contained in vehicle code section 40802.

23 Such a survey is explicitly discoverable under Penal Code section 1054.1, which reads, in  
24 pertinent part:

25  
26 The prosecuting attorney shall disclose to defendant all of the following materials...(f)... Any  
27 reports or statements of experts made in conjunction with the case, including ... scientific  
28 tests, experiments, or comparisons which the prosecutor intends to offer into evidence at the  
trial.

1 An engineering and traffic survey is, most certainly, a “report,” “statement,” based on “scientific  
2 tests, experiments, or comparisons...” that the prosecutor intends to introduce at trial. As such, the  
3 prosecution is obligated by law to provide the defendant with a copy of such a survey upon a proper  
4 request made under section 1054.5(b). Defendant herein made such a request, which is a prerequisite  
5 to seeking court enforcement of the discovery provisions of the Penal Code sections 1054 *et. seq.*

6 The defendant must also disclose information when he or she attempts to obtain discovery from  
7 the People. *See* P.C. Section 1054.3 and 1054.5(b). Where the defense discloses section 1054.3  
8 discovery in an informal discovery requests to the people for section 1054.1 discovery, the people  
9 must disclose within 15 days the information sought by the defense in that request (P.C. Section  
10 1054.5(b) and 1054.7). Where the people ignore such a request, the defense may move for sanctions  
11 “upon a showing that a party has not complied with the informal discovery procedure...,” and “a court  
12 may make any order necessary to enforce the provisions of this chapter, including, but not limited to  
13 immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the  
14 presentation of real evidence, continue the matter, or any other lawful order.” No motion to compel is  
15 required as a prerequisite to such sanctions (*People v. Jackson*, (1993) 15 Cal.App.4<sup>th</sup> 1197, 19  
16 Cal.Rptr.2d 80.)

17 **II. IN TRAFFIC INFRACTION CASES, WHERE THE PEOPLE HAVE FAILED TO**  
18 **COMPLY WITH THE INFORMAL DISCOVERY PROCEDURES IN PENAL**  
19 **CODE SECTIONS 1054.1 AND 1054.7, THE PEOPLE SHOULD BE SANCTIONED**  
20 **WITH PRECLUSION OF THE TESTIMONY OF ANY POLICE OFFICER**  
21 **WITNESS AND WITH PRECLUSION OF ADMISSION OF ANY ENGINEERING**  
22 **AND TRAFFIC SURVEY.**

23 Here, the Defendant may be appropriate disclosures under section 1054.3, and requested  
24 disclosure from the People under section 1054.1, but the People ignored the request. Defendant sent a  
25 request to the police agency involved (Riverside CHP), being notified directly in the light of the fact  
26 that the prosecutor does not choose to participate in traffic infraction prosecutions. A copy of the  
27 request is attached to the within declaration as exhibit “A.” A copy of a letter received from the  
28 District Attorney’s Office, wherein they declined to become involved in traffic infraction cases, is

1 attached to the written declaration as exhibit "B." The appropriate sanction in this type of case is  
2 preclusion of the citing officer's testimony and exclusion of any engineering and traffic survey. A  
3 court may properly exclude the testimony of a witness whose paperwork has been unreasonably  
4 withheld (*Sandeffner v. Superior Court* (1993) 18 Cal.App.4<sup>th</sup> 672, 22 Cal.Rptr.2d 261).

5 This, after all, is a traffic infraction matter. Even if the court were to order disclosure just before  
6 trial, the Defendant would, most likely, require more time to prepare for trial after having read the  
7 Officer's version on the reverse of his or her notice to appear. Additionally, due to the complexities of  
8 the requirements for valid engineering and traffic survey, it would be patently unfair to defendant to  
9 allow disclosure of the survey just before trial, without giving defendant time to properly examine the  
10 survey for compliance with Vehicle Code section 627 and other legal requirements. Thus, continuing  
11 this matter and requiring the Defendant to come to court for an extra appearance would be unfair,  
12 especially in light of the fact that the people would be responsible for the delay by virtue of their  
13 failure to disclose.

14 Since the People have failed to comply with the statutory provisions of Proposition 115, sanctions  
15 are absolutely necessary to penalize the People's initial transgression and, more importantly, to deter  
16 future abuse of the discovery process. Traffic infraction defendants should not have to bring a written  
17 motion such as this to secure compliance.

18 The People may argue that sanctions are not necessary or required where the defendant eventually  
19 receives the information requested sometime before trial. Their reasoning would be that the defendant  
20 is not prejudiced and or that there is no "no harm done" by the People's initial refusal to perform their  
21 duties under Proposition 115. There are many flaws in this argument and there is a substantial amount  
22 of authority in opposition to these contentions.

23 The clear and unequivocal policy of our state's legislature and judiciary is that traffic infraction  
24 proceedings must be simple, speedy, and inexpensive to conduct (*People v. Carlucci* (1979) 23  
25 Cal.3d 249, 152 Cal.Rptr. 439; *In Re Dennis B.* (1976) 18 Cal.3d 687, 135 Cal.Rptr. 82). In *In Re*  
26 *Dennis*, Justice Mosk wrote:

27  
28 The chief reason for classifying some prohibited acts as infractions is to facilitate their swift  
disposition. ... This type of flexibility benefits all parties: defendants gain a swift and

1 inexpensive disposition of their cases without the risk of major penalties; and the prosecution,  
2 the court system, and ultimately the public benefit because judicial and law enforcement  
resources are freed to concentrate on serious criminal behavior (*Id.* at 695).

3 The *justification* for this policy is further explained in *People v. Carlucci* (1979) 23 Cal.3d 249,  
4 where the court stated,

5 Inasmuch as these cases ordinarily entail the imposition of small fines, it is neither  
6 economically feasible nor warranted by the relatively limited monetary exposure of the  
7 defendant or counsel to be employed or multiple appearances to be made for arraignment and  
8 trial. As noted in *People v. Battle* (1975) 50 Cal.App.3d Supp. 1, 7, 123 Cal.Rptr. 636, 640... “  
in the overwhelming majority of infraction cases the primary interest of the accused will be  
served by expedition and disposal...” (cite omitted)(*Id.* at 258).

9 The above-cited policy is obstructed, the defendant is prejudiced, and the integrity of the courts is  
10 threatened when prosecuting agencies do not respond to legitimate discovery requests. Defendants  
11 must move the court to issue an order for disclosure of the essential information in order to obtain  
12 lawful and adequate discovery. As a result, a procedure that is required to be swift, inexpensive, and  
13 uncomplicated becomes complex and plagued by delays.

14 The defendant is prejudiced because she is forced to expend time and money on multiple pretrial  
15 court appearances, rather than on preparing a defense to the charges. The trial court itself is harmed by  
16 the prosecution’s nonconformance with Proposition 115 because it is required to extend precious  
17 judicial resources on enforcing Proposition 115’s intended, self-executing provisions. In fact, two of  
18 the laws stated purposes for this discovery procedure are to reduce the expenditure of judicial  
19 resources on pretrial discovery issues in criminal cases:

20  
21 This chapter shall be interpreted to give effect to all of the following purposes:... (b) to save  
22 court time by requiring that discovery be conducted informally between and among the parties  
before judicial enforcement is requested. (c) To save court time in trial and avoid the necessity  
23 for frequent interruptions and postponements... (Penal Code section 1054).

24 Whenever these provisions are not enforced by the imposition of sanctions, the law’s explicit  
25 purpose is subverted and the errant party wastes judicial resources. This is because the statutory  
26 scheme of Proposition 115 obviates the need for judicial intervention in into the discovery process  
27  
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1 unless there is a bona fide question of law regarding the material requested by a party. (See *People v.*  
2 *Jackson* (1993) 15 Cal.App.4<sup>th</sup> 1197, 19 Cal.Rptr.2d 80.) No such question exists in this action.

3 If this court allows prosecuting agencies to engage in such unlawful conduct, the likely result will  
4 be routine noncompliance with informal discovery requests. This is because the message will be sent  
5 to the People that such noncompliance will be ignored and even tolerated. Such a result, even on a  
6 small scale, will not only subvert the well-established and strongly promoted judicial and legislative  
7 policies underlying the current traffic infraction and criminal discovery procedures, but will also erode  
8 the confidence our citizens have in the fairness and impartiality of the entire criminal justice system.

9 In *Carlucci, supra*, the California Supreme Court emphasized a long-standing principle that courts  
10 are required to "...avoid, as much as possible, the appearance of impropriety" (*People v. Carlucci*, at  
11 259). A court's adherence to the above stated principle of avoiding the appearance and fact of  
12 impropriety is even more essential in traffic court than in any other form. In *People v. Kris* (1979) 96  
13 Cal.App.3d 913, 921; 158 Cal.Rptr. 420, the Court of Appeals stated:

14  
15 So long as traffic violations are adjudicated in Court, the letter and spirit of misdemeanor  
16 procedures should be followed. ... This is often the only contact citizens have with the court  
17 system. It is important that the proceedings appear to be fair and just. Appearance of  
18 arbitrariness is to be avoided, even in the crowded conditions of traffic court.

19 In *People v. Goulet* (1992) 13 Cal.App.4<sup>th</sup> Supp. 1, the Court recently reiterated this point, stating:

20 Traffic rules account for most of the contact by average citizens with law enforcement and the  
21 courts. Enforcement of laws which are widely perceived as unreasonable and unfair generates  
22 content toward those who make and enforce those laws.

23 Nothing could appear to be more improper, be more opposed to the spirit of the law, or generate  
24 serious contempt for law enforcement agencies than a court's practice of strictly enforcing the  
25 technical provisions of the Vehicle Code against traffic infraction defendants, while, at the same time,  
26 refusing to enforce discovery provisions against prosecuting agencies.

27 The sanction of preclusion of police officer's testimony, in serious cases involving *malum in se*  
28 crimes, should be reserved for those situations where the abuse of the discovery process is particularly

1 egregious. In traffic infraction cases, however, where the charges involve only *malum prohibitum*  
2 offenses, distinction of preclusion of the officer's testimony and exclusion of engineering and traffic  
3 survey in a radar case, is the most efficient and the most appropriate under existing law. Preclusion  
4 and exclusion, in most instances, will undoubtedly result in the failure of the prosecution to be able to  
5 establish a *prima facie* case against the defendant. This is tantamount to ordering dismissal. Such a  
6 ruling, however, would not be a departure from long-established procedures for handling prosecutorial  
7 errors in traffic infraction matters.

8 In support of this position is a large body of case law ruling that error on the part of the people or  
9 the trial court, at the trial level or on appeal, necessitates dismissal of traffic infraction cases. *People v.*  
10 *Kris* (1979) 96 Cal.App.3d 913 (sentencing error mandates dismissal on remand following reversal);  
11 *People v. Ruhl* (1967) 63 Cal.App.3d Supp. 6; *People v. Bighinatti* (1975) 22 Cal.App.3d Supp. 5).

12 In a case involving prosecuting agencies who fail to comply with proposition 115, the Court of  
13 Appeal has ruled that dismissal, in and of itself, is an appropriate sanction for the government's  
14 refusal to provide lawful discovery results in a denial of due process to the defendant (*People v.*  
15 *Brophy* (1992) 5 Cal.App.4<sup>th</sup> 932, 937-938, 7 Cal.Rptr.2d 367). The failure to produce the most  
16 essential and controversial piece of evidence in the exclusive control of the prosecution, such as in  
17 engineering and traffic survey, constitutes an even more egregious due process violation and that of  
18 refusing to produce relevant written statements of the citing officer. Such is the case here.

19 Justice must be administered equally. This means that prosecuting agencies must be held  
20 accountable for their violation of the law just as strictly as accused says the symptoms are made to  
21 answer for their alleged violations-if not more so—because of their sworn duty to enforce and uphold  
22 the law.

### 23 24 CONCLUSION

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26 It is for these reasons and based on the foregoing authorities that defendant humbly request this  
27 court to order that the siding police officer be precluded from testifying and the engineering and traffic  
28 survey be excluded such that the matter must be dismissed for lack of prosecution. In the alternative,

1 defendant humbly requests this Court to order disclosure of such evidence and payment by the people,  
2 to defendant, of monetary sanctions in the sum of \$500 to compensate defendant for the time and  
3 effort spent for her attorney in researching, drafting, and arguing this motion to compel discovery.

4  
5 DATED: 5-11-11  
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7 Respectfully submitted,

8 THE PEDIGO LAW CORPORATION

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Brian T. Pedigo, Esq.  
12 Attorney for Defendant

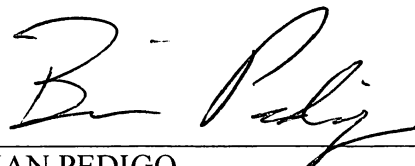
DECLARATION

I, BRIAN PEDIGO, declare:

1. I am the attorney of record for the Defendant in the above-entitled action.
2. On 4/19/2011, I caused the citing police agency (Riverside CHP) to be served with copies of an informal discovery request, a copy of which is attached hereto, with a copy of the Proof of Service, as Exhibit "A."
3. More than 20 days have elapsed since I caused said request to be mailed, and I have received no response to the same from anyone.
4. The Riverside District Attorney has informed me on a prior traffic case that they do not respond to traffic infraction discovery requests, and that the request should be sent to the issuing agency only. A true and correct (and redacted) copy of the letter from its office is attached as Exhibit "B."

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

Dated: 5-11-11



BRIAN PEDIGO,  
Attorney for Defendant

THE PEDIGO LAW CORPORATION  
7545 Irvine Center Dr, Ste 200  
Irvine, CA 92618

**PROOF OF SERVICE**

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: 7545 Irvine Center Drive, Suite 200, Irvine, CA 92618.

On 5-11, 2011, I served the foregoing document described as:

**NOTICE OF MOTION FOR PRECLUSION OF TESTIMONY; FOR EXCLUSION OF EVIDENCE; OR IN THE ALTERNATIVE FOR DISCLOSURE AND MONETARY SANCTIONS; DECLARATION, POINTS AND AUTHORITIES**

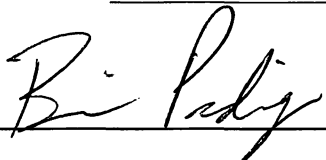
on the following parties in this action by first-class mail by placing a true copy(s) thereof enclosed in a sealed envelope(s) addressed as follows:

<b>Riverside CHP 8118 Lincoln Ave Riverside, CA 92504-4316</b>	<b>Riverside Superior Court Attn: Traffic Division 13800 Heacock Street Moreno Valley, CA 92553</b>
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I am "readily familiar" with the firm's practice of collection and processing of 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 Corona, CA, 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 and the United States of America, that the foregoing is true and correct.

Executed on 5-11, 2011, at Corona, California

  
\_\_\_\_\_

Brian T. Pedigo

# Exhibit “A”

1 Brian T. Pedigo, State Bar No. 256439  
2 THE PEDIGO LAW CORPORATION  
3 7545 Irvine Center Drive, Suite 200  
4 Irvine, CA 92618  
5 Phone: (877) 274-2612  
6 Fax: (949) 61400766  
7 Brian@PedigoLaw.com

8 Attorney for Defendant [REDACTED]

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF RIVERSIDE, MORENO VALLEY**

11 [REDACTED]  
12 THE PEOPLE OF THE STATE OF CALIFORNIA,  
13 vs.  
14 [REDACTED],  
15 Defendant.

Case No.: 57536ND

**DISCOVERY REQUEST, SET ONE**

COURT: 13800 Heacock Street, Moreno Valley, CA 92553

16 Pursuant to California Penal Code sections 1054 and 1054.1, and California Government Code  
17 section 26500, the defendant in the above entitled matter does hereby request under discovery the  
18 following:

- 19 • A list of all witnesses for the prosecution;
- 20 • A copy of the engineering and traffic survey for Cajalco Road e/B east of Wood Road,  
21 required by section 40802 of the California Vehicle Code, and any other documentation  
22 necessary to prove that this is not a speed trap as defined in Vehicle Code section 40802;
- 23 • A copy of all records regarding the maintenance and calibration of the radar unit used in this  
24 case;

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- A copy of each and every certification issued to Officer Cortenbach involving the use of said radar unit;
- A copy of all of Officer Cortenbach's notes on this case including copies of the front and back of the officer's copy of the ticket.

Please note: PC 1054.1 uses the imperative, "shall disclose." The only place in the law where there is any choice in this matter is in Government Code 26500, which states in part:

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

A failure to provide the above-referenced documents will be interpreted as an exercise of the discretion provided for in GC 26500 and a decision not to prosecute this case.

Dated: April 19, 2011

THE PEDIGO LAW CORPORATION



Brian T. Pedigo  
Attorney for Defendant



**PROOF OF SERVICE**

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: 7545 Irvine Center Drive, Suite 200, Irvine, CA 92618.

On 4-19, 2011, I served the foregoing document described as:

**DISCOVERY REQUEST, SET ONE**

on the following parties in this action by first-class mail by placing a true copy(s) thereof enclosed in a sealed envelope(s) addressed as follows:

<b>Riverside CHP 8118 Lincoln Ave Riverside, CA 92504-4316</b>	
--	--

I am "readily familiar" with the firm's practice of collection and processing of 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 Corona, CA, 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 and the United States of America, that the foregoing is true and correct.

Executed on 4-19, 2011, at Corona, California



Brian T. Pedigo

THE PEDIGO LAW CORPORATION  
7545 Irvine Center Dr. Ste 200  
Irvine, CA 92618

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# Exhibit “B”



ROD PACHECO  
DISTRICT ATTORNEY

OFFICE OF  
THE DISTRICT ATTORNEY  
COUNTY OF RIVERSIDE

September 1, 2010

Brian Pedigo  
7545 Irvine Center Dr., Ste 200  
Irvine, CA 92618

Dear Mr. Pedigo:

Subject: Request for Traffic Discovery re Case No.

Please be advised that we received your request for discovery dated August 27, 2010 on August 31, 2010.

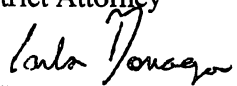
Under Penal Code section 1054.1, the prosecuting attorney is obligated to provide discoverable materials to a defendant in a criminal matter. However, our office does not prosecute traffic infraction cases. (Govt. Code § 26500, *People v. Carlucci* (1979) 23 Cal.3d 249.) Thus, we are not in possession of discoverable documents. (See Penal Code § 853.6 (e)(1) & (3) and Vehicle Code sections 40500(a) & (d), 40506 [copy of citation/complaint sent directly to magistrate, original and all other copies retained by law enforcement supervisor].) Nevertheless, copies of discoverable documents may be obtained as provided in Penal Code section 1054.5.

Penal Code section 1054(b) dictates that discovery is to be conducted informally between the parties in order to save the court's time. Thus, a defendant should request discovery from the law enforcement agency that investigated or prepared the case against him. (Penal Code § 1054.5(a).) If a party fails to provide discoverable documents within 15 days of the informal request, the court may make any order necessary to enforce the laws pertinent to discovery. (Penal Code § 1054.5(b).) However, "the court shall not dismiss a charge . . . unless required to do so by the Constitution of the United States." (Penal Code § 1054.5(c).)

In light of the above, please direct any requests for discovery on your traffic infraction matter to the agency from which the citation was issued.

Very truly yours,

ROD PACHECO  
District Attorney

  
CARLOS MONAGAS  
Supervising Deputy District Attorney