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7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 THE PEOPLE OF THE STATE OF
CALIFORNIA,

11 Plaintiff,

12 v.

13 MATTHEW STERLING HOUSER,

14 Defendant.

Case No. 19T049326C

RESPONSE TO DEFENDANT'S
MOTION TO DISMISS

Date: July 20, 2021

Time: 9:00 a.m.

Dept.: A

Witnesses: 0

Estimated Time: 10 minutes

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16 INTRODUCTION

17 If you walk into a courtroom designated primarily for traffic infractions, you will most
18 likely see a commissioner, a peace officer testifying as the prosecution witness, and a defendant
19 or a defense attorney. You will not see a prosecuting attorney. For violations that occurred within
20 the jurisdiction of the City of San Diego you will not see a deputy city attorney. For violations
21 that occurred within the county but outside the jurisdiction of the City of San Diego you will not
22 see a deputy district attorney.

23 Defendant, who was cited for overnight camping in Balboa Park in violation of the
24 San Diego Municipal Code (SDMC), now moves to dismiss this case on the ground that the City
25 Attorney's Office acknowledges this reality—that in most infraction cases there is no prosecutor.
26 But because the courts have long approved of this practice, and recently affirmed it in *People v.*
27 *Cotsirilos*, 50 Cal. App. 5th 1023 (2020), Defendant's motion must be denied.

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1 **STATEMENT OF THE CASE**

2 On January 31, 2019, a San Diego police officer observed Defendant camping overnight
3 near 2100 Pan American Way in Balboa Park. The officer cited Defendant for a violation of
4 SDMC section 63.0102(b)(12), camping overnight in a public park. Defendant was released after
5 signing a promise to appear.

6 On March 18, 2019, Defendant was arraigned by his attorney and a not guilty plea was
7 entered. A court trial was calendared for August 8, 2019. On August 1, 2019, on defense motion
8 the trial was continued to November 4, 2019.

9 On November 4, 2019, Defendant appeared by attorney for trial before Commissioner
10 Doft. Defendant moved for the release of documents that had been subpoenaed duces tecum, and
11 moved for dismissal. The motion for release of documents was granted, the motion to dismiss was
12 denied, and an order to show cause against the City Attorney was set for December 10, 2019. The
13 court minutes state: "OSC re: city [attorney] should not be cited for contempt and sanctioned for
14 discovery violations. Court orders San Diego Police Department and San Diego City Attorney's
15 Office to give Ms. Cusack officer's body worn camera footage of incident on CD no later than
16 November 21, 2019." Commissioner Doft retained personal jurisdiction over the case.

17 On November 8, 2019, Commissioner Doft ordered the San Diego Police Department and
18 San Diego City Attorney's Office to provide a copy of the citing officer's body worn camera
19 video footage to defense counsel.

20 On November 21, 2019, Defendant appeared by counsel and moved to continue the OSC.
21 Commissioner Doft granted the motion, continued the OSC to December 30, 2019, and also set
22 trial for December 30, 2019.

23 On December 19, 2019, Defendant appeared by counsel and moved to continue the
24 OSC and trial. A court trial was set for February 20, 2020, and a motion hearing was set for
25 February 4, 2020. Defense counsel filed a motion to compel discovery and to impose sanctions.
26 Commissioner Doft was relieved of personal jurisdiction.

27 On January 28, 2020, the City Attorney's Office filed points and authorities in opposition
28 to Defendant's motion to compel discovery and for monetary sanctions. The points and

1 authorities explained that normally the City Attorney’s Office does not appear on or participate in
2 infraction cases and was not the “prosecutor” in the case, and that defendants should request
3 discovery for the citing law enforcement agency.

4 On February 4, 2020, the matter was assigned for hearing to Commissioner Rice. Defense
5 counsel filed a challenge pursuant to Code of Civil Procedure section 170.6 and the matter was
6 reassigned to Commissioner Keilani. The court took testimony and heard argument. Following
7 the hearing, on February 5, 2020, Commissioner Keilani ordered the San Diego Police
8 Department to produce additional discovery, if it existed. Trial was continued to March 23, 2020.

9 Because of the COVID-19 pandemic the March 23, 2020, trial date was vacated. Trial was
10 reset for August 28, 2020.

11 On August 28, 2020, at the time of trial defense counsel requested that a discovery motion
12 be set in January 2021. The trial was reset for February 24, 2021, and a discovery motion was set
13 for January 21, 2021.

14 On January 21, 2021, defense counsel moved to continue the motion and trial. The
15 discovery motion was reset for July 20, 2021, and the trial was reset for August 19, 2021.

16 On June 28, 2021, defense counsel filed a motion to compel discovery and for monetary
17 sanctions against the City Attorney’s Office. Defense counsel also filed the instant common law
18 motion to dismiss.

19 **ARGUMENT**

20 **I**

21 **THE PROSECUTOR IS NOT REQUIRED TO APPEAR AT**
22 **INFRACTION TRIALS**

23 In *People v. Carlucci*, 23 Cal. 3d 249 (1979), the California Supreme Court extensively
24 discussed the unique nature of infraction prosecutions and the benefits to all sides of encouraging
25 expeditious and flexible procedures, and held that traffic infraction trials may be conducted
26 without a prosecuting attorney if the conduct of the court is fair. *See also People v. Daggett*, 206
27 Cal. App. 3d Supp. 1 (1988).

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1 After *Carlucci*, Government Code section 26500, which requires the public prosecutor to
2 attend the courts, was amended to add the language, “within his or her discretion.” Ten years
3 later, in *People ex rel. Kottmeier v. Municipal Court*, 220 Cal. App. 3d 602 (1990), declined to
4 repeat the *Carlucci* court’s recital of the rationale for handling infractions without the presence of
5 a prosecutor, but agreed and held that Government Code section 26500 does not require
6 prosecutors to attend infraction proceedings.

7 Recently the Fourth District Court of Appeal affirmed that under normal circumstances a
8 prosecutor need not appear in traffic infraction cases. In *People v. Cotsirilos*, the court held that a
9 prosecutor need not appear when a Penal Code section 1538.5 motion to suppress has been filed,
10 nor does the prosecutor need to file responsive pleadings. In so holding the court approvingly
11 cited *People v. Marcroft*, 6 Cal. App. 4th Supp. 1 (1992) for the proposition that economic
12 realities preclude the presence of a prosecutor at most infraction trials.

13 Thus, in a normal infraction trial a prosecutor need not appear, and in almost all cases
14 does not appear. In such cases the City Attorney does not act as the prosecutor because there is no
15 prosecutor.

16 **II**

17 **DEFENDANT’S MOTION SHOULD BE DISMISSED AS**
18 **NONSENSICAL**

19 Defendant’s motion to dismiss is nonsensical. It cites *Carlucci*, *Cotsirilos*, and
20 Government Code section 26500 and recognizes that the prosecutor has the right not to appear.
21 Yet it asks the court to dismiss the case because the prosecutor has not appeared.

22 None of the cases or statutes cited by Defendant contravene the long-standing authority
23 that holds that the prosecutor is not required to appear in a normal traffic infraction case, like this
24 charge of violating SDMC section 63.0102(b)(12). Accordingly, the motion is without merit and
25 should be denied.

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CONCLUSION

For the reasons set forth above the People request the motion to dismiss be denied.

Dated: July 12, 2021

MARA W. ELLIOTT, City Attorney

By 

Steven K. Hansen
Deputy City Attorney

Attorneys for Plaintiff

MARA W. ELLIOTT, City Attorney
JOHN C. HEMMERLING, Assistant City Attorney
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Date: July 20, 2021
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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DECLARATION OF
ELECTRONIC SERVICE


Case No. 19T049326C
People v. Matthew Sterling Houser

I, Donna Armitstead, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned electronic service occurred. My business address is 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103. I served the following document(s): **RESPONSE TO DEFENDANT'S MOTION TO DISMISS**, to:

Coleen M. Cusack
Ccusack.policy@gmail.com

On July 12, 2021, I transmitted the above-described document(s) by electronic service to the above-listed electronic service address. The transmission originated from my electronic service address darmitstead@sandiego.gov and was reported as complete and without error. [CCP § 1010.6; C.R.C. Rule 2.251.]

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 12, 2021, at San Diego, California.



Donna Armitstead

PROOF OF SERVICE BY ELECTRONIC SERVICE
C.C.P. § 1010.6 and C.R.C. Rule 2.251