

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
WEST JUSTICE CENTER

JAN 23 2007

ALAN SLATER, Clerk of the Court
BY D. FREEZE DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)
vs.)
NELSON NAGAI,)
Defendant.)

CASE NO.: LA007022PE

VERDICT OF NOT GUILTY
WRITTEN FINDINGS
BY THE COURT

Vehicle Code Section 21455.5(g)(1) states:

(1) A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include a provision for payment or compensation to the manufacturer or supplier based on the number of citations generated or as a percentage of the revenue generated as a result of the equipment authorized under this section.

On July 5, 2005, the City of Los Alamitos and Redflex Traffic Systems, Inc., entered into a contractual agreement for the operation of an automated enforcement system which comes within the provisions of Vehicle Code section 21455.5 et. seq. While Los Alamitos police officers have the sole discretion to issue a citation, any potential violation data itself is initially stored on the Redflex system. In fact, Redflex is obligated by the contract to develop Photo Red Light Violation Criteria in consultation

1 with the city. (Agreement, pp. 4-6, 20-21).

2 As a part of the agreement (Exhibit "D", Compensation & Pricing (attached)) Los
3 Alamitos pays Redflex what is stated as a "fixed fee" of \$5730 per month for each
4 designated intersection approach. The "fixed fee" is characterized as a maximum
5 compensation. Each month the parties compare the fixed fee against the amount of
6 money received from the citations. If the money received is less than the fixed fee, Los
7 Alamitos is only obligated to pay the money received. However, the difference carries
8 over to the next month as a deficit. If the situation is reversed in the next month and
9 money received from the citations exceeds the fixed fee, then Los Alamitos is obligated
10 to pay not only the fixed fee, but to make up any of the deficit it can from the excess
11 money. There is provision to forgive any deficit remaining after 12 months.

12 In interpreting other statutory language of Vehicle Code Section 21455.5, it has
13 been held that the statute must be construed to ascertain and give effect to the
14 Legislature's intent; and to give the words of the statute their usual and ordinary
15 meaning. Leonte vs. ACS State & Local Solutions, Inc, 123 Cal. App. 4th 521, 526-7. In
16 any given month under the contract, payment to Redflex can be based, not on a flat fee
17 of \$5730, but instead on a percentage of the revenue generated. Indeed, by the
18 contract's express language, compensation can be 100% of the revenue generated for
19 one or more months while the deficit gets reduced or eliminated. Such a payment
20 method would, as a matter of common sense, embolden the supplier to store more data
21 and develop broader criteria for Los Alamitos' consideration; especially if, over time,
22 any deficits continue or increase. Yet notwithstanding any facts to the contrary, this is a
23 revenue driven pricing system, in direct violation of Vehicle Code section 21455.5(g)(1).

24 Vehicle Code Section 21455.5 is to be strictly construed. The statutory
25 requirements are intended to provide protection to the motorist public, and a conviction
26 cannot result from a violation of its statutory provisions. Accordingly, the defendant in
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1 case number LA007022PE must be found not guilty.

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5 Dated: 1-23-07



Ken Schwartz
Commissioner of the Above-Entitled Court

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EXHIBIT "D"
COMPENSATION & PRICING

Commencing on the expiration of the Warning Period for each Designated Intersection Approach, Customer shall be obligated to pay Redflex a fixed fee of \$5,730 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement. Notwithstanding the foregoing, Customer may pay, in arrears, the Fixed Fee for the first ninety (90) days after the expiration of the Warning Period to allow for collection by Customer of sufficient Fines to pay the Fixed Fee.

Cost Neutrality

Cost neutrality is assured to Customer. The maximum compensation that Customer shall be obligated to pay to Redflex each month is the Fixed Fee. Each month, Customer and Redflex shall compare the aggregate revenue received from all Citations ("Revenue") to the total amount invoiced by Redflex for the Fixed Fee ("Amount Invoiced") during the previous month ("Cost Neutrality Review"). If the Amount Invoiced exceeds the Revenue, then City shall only be obligated to pay the Revenue to Redflex and the difference between the Revenue and the Amount Invoiced for that month will carry over to the next month as a deficit ("Deficit Amount"). If, in the next following month, the Revenue exceeds the Amount Invoiced, Customer shall pay the Amount Invoiced plus all or any portion of the Deficit Amount to the extent that there is sufficient Revenue to pay all or any portion of the Deficit Amount. At the end of each twelve (12) month period following the Installation Date of the Photo Red Light Program, Redflex shall forgive any Deficit Amount from the previous twelve (12) month period ("Year End Deficit Amount") that remains due and payable and Customer shall not thereafter be obligated to pay such Year End Deficit Amount.