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2 STATE BAR NUMBER 96285
COUNTY OF SANTA CRUZ
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5 ATTORNEYS FOR THE PEOPLE
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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CRUZ

10	THE PEOPLE OF THE STATE OF CALIFORNIA,)	NOS. 3WM018538,
)	4WM034801, 4WM021512,
11)	4WM023363, 4SM028271,
	Plaintiff,)	4SM021812, 4SM023894,
12)	4SM044470, 5SM085642
)	& 4SM021512 (if it
13	-vs-)	exists)
)	
14)	PEOPLE'S OPPOSITION
)	TO MOTION TO DISMISS
15	RICHARD JAMES QUIGLEY,)	
)	
16)	Date: 6/2/06
	Defendant(s).)	Time: 1:30 P.M.
17)	Dept: 12

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19 The District Attorney does not ordinarily appear in traffic
20 court infraction matters. Therefore, the court should not expect
21 that the District Attorney will choose to participate further in
22 the above-captioned infraction matters simply because the defendant
23 wishes to relitigate issues he has previously litigated in these
24 and other cases. However, the District Attorney will briefly
25 respond to this motion for the sole purpose of explaining why the
26 court should summarily deny defendant's motion to dismiss.

27 First of all, defendant's motion to dismiss is untimely with
28 regard to all of his cases which have previously been tried and in
which the court previously found his violations to be correctable.

1 It appears from the court's Open Access system that the only above-
2 mentioned case in which defendant has not yet been tried is 5SM085642.
3 The other matters have all been fully adjudicated and the court gave
4 defendant the opportunity to argue that Vehicle Code section 27803 is
5 invalid. Defendant was also allowed to argue that the violation is
6 correctable, and the court actually ruled in his favor on this issue
7 in all of the matters which were previously tried. Thus, his post-
8 trial motion to dismiss on these same grounds should be rejected as
9 untimely and repetitious.

10 Moreover, it appears from the transcript of proceedings held on
11 July 15, 2005, that the Watsonville Police Department has already
12 complied with the court's prior ruling on correctability and has
13 signed off the citations issued by that department. As a result, the
14 Watsonville Police Department cases should already have been dismissed
15 and final judgements entered. Thus, further motions may not now be
16 heard in these closed cases.

17 Even more importantly, to the extent that defendant's motion
18 revisits his claim that a section 27803 violation is correctable, this
19 court's prior ruling on this very issue in cases 4SM21812, 4WM023363,
20 4SM023894, 4SM028271 and 4SM044470 is now pending before the Sixth
21 District Court of Appeal in H029406. As a result of the Attorney
22 General's writ petition in H029406, the Court of Appeal has issued a
23 stay of this court's prior order so that the appellate court can
24 further consider the correctability issue raised by the writ petition.
25 (See copy of stay order which is attached as Exhibit 1.) If this
26 court now grants a motion to dismiss the underlying cases, this
27 court's actions would not only run afoul of the Court of Appeal's stay
28 order, but would likely deprive the appellate court of jurisdiction

1 to give us a definitive decision on this issue which the parties have
2 already spent so much time and effort litigating. Therefore, this
3 court should not take any further action on these five matters, and
4 should make no further rulings on the issue of correctability, until
5 the Court of Appeal makes a decision in H029406.

6 Furthermore, defendant's challenges to the validity of Vehicle
7 Code section 27803 are not supported by the binding California cases
8 he cites, to wit, Buhl v. Hannigan (1993) 16 Cal.App.4th 1612 and
9 Bianco v. California Highway Patrol (1994) 24 Cal.App.4th 1113. (See
10 also, People v. Elkins (1992) 12 Cal.App.4th Supp. 1.) The court
11 should note that Buhl and Elkins rejected various constitutional
12 challenges to section 27803, including challenges made on due process
13 and equal protection grounds. Subsequently, in People v. Barron
14 (1995) 37 Cal.App.4th Supp. 1, 3, the court found a defendant's claim
15 that a woolen ski cap complied with the helmet law was "meritless" and
16 thus required no further discussion. Similarly, defendant's claim
17 that a baseball cap complies with the helmet law has no merit which
18 warrants further discussion here. In addition, a violation of section
19 27803 is not correctable. The People refer the court to the Attorney
20 General's points and authorities in H029406 which adequately explain
21 why such a violation is not correctable. (A copy of the Attorney
22 General's petition is attached hereto as Exhibit 2.) Thus, if the
23 court rules on the merits of defendant's motion in 5SM085642 -- the
24 one untried case in which defendant may not have litigated these
25 issues previously, the People submit that the court must deny his
26 motion to dismiss.

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CONCLUSION

For all of the foregoing reasons, the court should put an end to defendant's efforts to relitigate the same issues he has argued before in these cases. In all of the cases which have been previously litigated and tried, the court should summarily deny this motion without reaching its merits. However, if the court decides to consider the merits of defendant's motion to dismiss in one or more of his cases, the court should deny the motion under the controlling legal authorities.

Dated: April 10, 2006.

Respectfully submitted,

BOB LEE
DISTRICT ATTORNEY


JOYCE E. ANGELL
ASSISTANT DISTRICT ATTORNEY