

1 Richard Quigley
2 2860 Porter Street
3 Soquel, CA 95073
4 phone: 831-661-0388

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8 **IN THE SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR SANTA CRUZ COUNTY**

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12 People of the State of California by) Case No.: **90260235**
13 CHP Officer Messing,)
14 Plaintiff(s),) **DEMUR TO**
15 vs.) **COMPLAINT**
16 Richard Quigley,)
17 Accused.)

18
19 **INTRODUCTION**

20 The accused (hereinafter "defendant") has asserted from the beginning
21 (including on the street, when dealing with the police) that he does not and has
22 not waived any of his constitutionally protected rights. The defendant does not
23 waive his right to the filing of a proper complaint by the proper person or any
24 other right designed to protect him, or otherwise allow anyone or anything to
25 separate him from the protections of either the State or Federal Constitutions.

26 In the above-entitled matter, the defendant reasserts those rights and refusal
27 to wave any of his constitutionally protected rights, knowingly or unknowingly,
28 as to this and any and all matters having to do with the above-referenced case.

DEMUR TO COMPLAINT

A. The defendant demurrers to the complaint (citation #KV50993) on the grounds that it is improper, incomplete and insufficient, to wit:

Penal Code §1004 provides, in pertinent part:

Penal Code §1004. Grounds for demurrer

The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

1. ...
2. That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information;
3. That more than one offense is charged, except as provided in Section 954;
4. That the facts stated do not constitute a public offense;
5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

1. The complaint has not been shown to have been properly filed with the court and served on the defendant.

Penal Code §1004, subsection 5, provides: The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof . . . (t)hat it contains matter which, if true, would constitute a . . . legal bar to the prosecution.

The court, absent a waiver or stipulation of both parties, cannot just arbitrarily assume jurisdiction. It's not so much what the complaint contains that constitutes a bar to prosecution, as what it fails to contain — some indication that it was “filed” with the clerk of the court, as required prior to assumption of jurisdiction. Failure to *file* an accusatory pleading results in the failure to establish jurisdiction for the court, and thereby constitutes a legal bar to prosecution of the matter(s) outlined in the complaint, and is therefore grounds for demur.

1 It was ruled in *City of San Diego v. Municipal Court* (1980) 102
2 Cal.App.3d 775, 778 (162 Cal.Rptr. 420) that “The filing of a complaint is
3 essential to invoke the jurisdiction of the court.” Elsewhere, it is stated that a
4 complaint filed in the proper court confers subject matter jurisdiction on the
5 court. (See *Harrington v Superior Court*, 194 Cal 185, 228 P 15 (1924); *Bayle-*
6 *Lacoste & Co. v Superior Court*, 46 Cal App 2d 636, 116 P2d 458 (1941))

7 The copy of the complaint in the possession of the accused does not bear a
8 file stamp, or any other indicator showing that it was filed with the court.

9 Wherefore the accused demurs to the complaint on the grounds that it is
10 insufficient, in that it has not been shown to have been filed, and properly
11 stamped “filed” on the face of the complaint, and thereby constitutes a legal bar
12 to the prosecution.

13 **2. The complaint is not accompanied with or supported by a warrant.**

14 Penal Code §1004, subsection 5, provides: “The defendant may demur to
15 the accusatory pleading at any time prior to the entry of a plea, when it appears
16 upon the face thereof . . . (t)hat it contains matter which, if true, would constitute
17 a . . . legal bar to the prosecution.”

18 The defendant was forced — by threat of being taken into custody, booked
19 and subjected to an unwarranted incarceration¹ — to sign a copy of a complaint
20 to which he must now answer. A complaint born of this methodology, absent a
21 warrant or other probable cause, and obtained under duress, is therefore viola-
22 tive of the accused’s rights to due process constituting a legal bar to prosecution.

23 In a criminal action, were the moving party (whoever that is) to have just
24 cause to invoke the jurisdiction of the court, it would also have just cause to
25 bring about the issuance of a warrant, which apparently they or it does not.

26 ¹ In Santa Cruz County, irrespective of the
27 statutes (specifically Vehicle Code Section
28 40302(c)), any person who demands to be taken
to a magistrate as opposed to signing a citation, is

arrested and booked and held in jail, seemingly
without end, until they waive their right to a
probable cause hearing at the time of, and over the
matter of, the arrest.

1 **3. The complaint fails to state the nature of the action.**

2 Penal Code §1004, subsection 5, provides: “The defendant may demur to
3 the accusatory pleading at any time prior to the entry of a plea, when it appears
4 upon the face thereof . . . (t)hat it does not substantially conform to the provi-
5 sions of Sections 950 and 952”

6 In that the complaint does not bear the title of the action, it also does not
7 state the *nature* of the action.

8 Although the defendant has asked the nature of this action, the only an-
9 swer given thus far is a legal fiction — Traffic Referee Mulligan stating that the
10 action is “quasi-criminal” in nature.

11 Although it is clear that thus far the courts had not indicated by their ac-
12 tions that this case is “criminal” in nature, all have thus far ignored the statutes
13 regarding how to proceed with a “criminal” action.

14 However, the defendant’s main complaint in that regard is that he is stum-
15 bling around trying to defend himself from charges, without benefit of under-
16 standing the nature of the action against him, and therefore incapable of deter-
17 mining which statutes apply to the process in which he is embroiled.

18 “If offense is not stated with sufficient clarity to enable defendant to
19 present his defense, he should demur on one or more of grounds set forth
20 in this section (PC 1004).” *People v Randazzo* (1957) 48 C2d 484, 310
21 P2d 413.

22 Since to withstand demur, the complaint must provide a defendant with
23 the information necessary to defend himself, and in that the complaint in the
24 above-entitled action does not state the *nature* of this action; the defendant is at a
25 loss as to how to mount a defense, and demur to the complaint must be sustained
26 if only on the grounds that the complaint does not bear the title of the action, or
27 otherwise reveal the *nature* of the instant action.

28 / / /

1 **4. The complaint fails to state a cause of action.**

2 **Penal Code §1004 provides, in pertinent part:**

3 Penal Code §1004, subsection 4, provides: “The defendant may demur to
4 the accusatory pleading at any time prior to the entry of a plea, when it appears
5 upon the face thereof . . . (t)hat the facts stated do not constitute a public of-
6 fense.”

7 In the instant complaint, the defendant is accused of violating Vehicle
8 Code §27803(b).

9 **Vehicle Code Section §27803 does not define a public offense.**

10 As to the allegation regarding VC §27803, VC §27803 is located in Divi-
11 sion 12 of the vehicle code, and therefore constitutes an equipment violation,
12 dismissible upon proof of correction, and not a public offense, to wit:

13 **§40522. Dismissal of charge on proof of correction; Notation on notice to
14 appear.**

15 **Whenever a person is arrested for violations specified in Section**
16 **40303.5 and none of the disqualifying conditions set forth in**
17 **subdivision (b) of Section 40610 exist, and the officer issues a notice**
18 **to appear, the notice shall specify the offense charged and note in a**
19 **form approved by the Judicial Council that the charge shall be**
20 **dismissed on proof of correction. If the arrested person presents, by**
21 **mail or in person, proof of correction, as prescribed in Section 40616,**
22 **on or before the date on which the person promised to appear, the court**
23 **shall dismiss the violation or violations charged pursuant to Section**
24 **40303.5.**

25 **§ 40303.5. Promise to correct violation; Disqualifying conditions.**

26 **Whenever any person is arrested for any of the following offenses,**
27 **the arresting officer shall permit the arrested person to execute a**
28 **notice containing a promise to correct the violation in accordance**
with the provisions of Section 40610 unless the arresting officer
finds that any of the disqualifying conditions specified in subdivi-
sion (b) of Section 40610 exist:

...
...

(d) **Any infraction involving equipment set forth in Division 12**
(commencing with Section 24000), . . .

VC §27803(b) is a correctable equipment violation statute, and no more.

1 **5. The complaint is not brought by a person or persons authorized to**
2 **initiate a criminal complaint on behalf of the People.**

3 Penal Code §1004, subsection 5, provides: “The defendant may demur to
4 the accusatory pleading at any time prior to the entry of a plea, when it appears
5 upon the face thereof . . . (t)hat it contains matter which, if true, would constitute
6 a . . . legal bar to the prosecution.”

7 Government Code § 26500. District attorney is public prosecutor

8 The district attorney is the public prosecutor, except as otherwise
9 provided by law.

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

13 Regardless of the desire for expedience, or the inconvenience of applying
14 the statutes, the defendant's constitutional rights are protected only if the court
15 adheres strictly to the statutes . . . all of them.

16 “The People, represented by the district attorney, are a party
17 plaintiff in all criminal actions, and the People are entitled to the same
18 judicial impartiality and fairness as any other litigant in the courts. ”

19 *People v Beasley* (1970) 5 CA3d 617, 85 Cal Rptr 501.

20 “Misdemeanor criminal complaints filed in the municipal court
21 by a private citizen without the district attorney’s authorization were
22 nullities and the court lacked jurisdiction to act except to dismiss them;
23 that the filing of criminal complaints must be approved, authorized or
24 concurred in by the district attorney before they are effective is shown
25 by former art VI §20 (now Gov C §100(b)) providing that all prosecu-
26 tions shall be conducted in the name of the people and by their
27 authorization, and Gov C §26500, providing that the district attorney
28 shall conduct on behalf of the people all prosecutions for public
 offenses, as well as by decisions striking down legislative attempts to
 vest power in the prosecutor to foreclose the exercise of judicial power,
 but recognizing that the charging process is a matter committed to the

1 discretion of the district attorney, a part of the executive branch of
2 government; moreover, due process of law requires that criminal
3 prosecutions be instituted with the regular processes of law, which
4 processes include the requirement that the institution of any criminal
5 proceeding be authorized and approved by the district attorney.”

6 *People v Municipal Court* (1972) 27 CA3d 193, 103 Cal Rptr 645, 66
7 ALR3d 717.

8 An accusatory pleading is a necessary prerequisite to invoking the court’s
9 jurisdiction (*Serna v. Superior Court* (1985) 40 Cal.3d 239 at 254 [219 Cal.Rptr.
10 420, 707 P. 2d 793]; *City of San Diego v. Municipal Court* (1980) 102 Cal.App.3d
11 775 at 779 [162 Cal.Rptr. 420]) and only the People may file an accusatory
12 pleading (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228 at 240-241 [138
13 Cal.Rptr. 101]; *People v. Smith* (1975) 53 Cal.App.3d 655 at 659-660 [126
14 Cal.Rptr. 195]; *People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193
15 at 200 [103 Cal.Rptr. 645]).

16 Failure of the public prosecutor to file the accusatory pleading (complaint)
17 in the above-entitled action constitutes a legal bar to prosecution and is therefore
18 proper grounds for demur.²

19 **6. The complaint does not bear the names of the parties (PC §950) or
20 specify allegations in ordinary and concise language (PC §952).**

21 Penal Code §1004, subsection 5, provides: “The defendant may demur to
22 the accusatory pleading at any time prior to the entry of a plea, when it appears
23 upon the face thereof . . . (t)hat it does not substantially conform to the provi-
24 sions of Sections 950 and 952”

25 **(a) The complaint does not bear the names of the parties.**

26 § 950. Contents of accusatory pleading

27 The accusatory pleading must contain:

- 28 1. The title of the action, specifying the name of the court to
which the same is presented, and the names of the parties;
2. A statement of the public offense or offenses charged therein.

² Requirement that information be signed by proper prosecuting attorney after facts constituting offense have been alleged therein is waived, unless objection is taken by motion to quash or demur. *Brooks v United States* (1925) 8 F2d 593.

1 Nowhere on the face of the complaint (or anywhere else on the complaint)
2 does the name of the “People of the State of California” appear, as it must to
3 withstand demur.

4 **(b) The complaint does not specify allegations of a “public offense” in ordi-**
5 **nary and concise language.**

6 **Penal Code §952. Charging public offense; Charging theft**

7 In charging an offense, each count shall contain, and shall be sufficient
8 if it contains in substance, a statement that the accused has committed
9 some public offense therein specified. Such statement may be made in
10 ordinary and concise language without any technical averments or any
11 allegations of matter not essential to be proved. It may be in the words
12 of the enactment describing the offense or declaring the matter to be a
13 public offense, or in any words sufficient to give the accused notice of
14 the offense of which he is accused. In charging theft it shall be sufficient
15 to allege that the defendant unlawfully took the labor or property of
16 another.

17 As described above (section 5), the complaint currently before the court
18 alleges a correctable equipment violation and not a public offense.

19 **B. Penal Code §959 requires that a complaint, in order to be sufficient,**
20 **be made and subscribed before some officer entitled to administer oaths.**

21 Penal Code §959, subdivision 3, provides: “The accusatory pleading is
22 sufficient if it can be understood therefrom: . . . If a complaint, that it is made
23 and subscribed by some natural person and sworn to before some officer entitled
24 to administer oaths.”

25 Nothing on the face of the complaint indicates that the complaint was
26 made and subscribed before anyone but the defendant, or that the district attor-
27 ney even knows the case is being prosecuted.

28 “An information must be subscribed by the district attorney and should
be set aside by the court in which the defendant is arraigned if not so
subscribed; but if such motion is not timely made, the defendant will be
held to have waived the objection.” *People v Fritz* (1921) 54 CA 137,
201 P 348.

1 In that the complaint was and is not shown to have been made and sub-
2 scribed by the district attorney, much less before some officer entitled to admin-
3 ister oaths, it is therefore a proper subject for demur.

4 **CONCLUSION**

5 WHEREFORE, for the foregoing reasons, the defendant demurs to the com-
6 plaint underpinning this action, and otherwise requests that the court suspend the
7 action against the defendant until such time as a proper complaint can be filed,
8 or allow the defendant to correct the violation and dismiss the pending charge.

9 Submitted this 30th day of December, 1999, by

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12 Richard Quigley, defendant, pro se
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