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ALAN CARLSON, Clerk of the Court

By
BY G GALON

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APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

vs.

[REDACTED] FRANCO,

Defendant and Appellant.

Case No. 30-2008-93057

JUDGMENT ON APPEAL
from the
SUPERIOR COURT
COUNTY OF ORANGE
NORTH JUSTICE CENTER

HON. ALLEN KELLEY STONE,
COMMISSIONER

Appellant contends evidence from the City of Fullerton's Automated Enforcement System was inadmissible because the City's contract with the camera operator contains a provision tying payment to the operator to revenue generated by the system. This court agrees, and orders the judgment reversed.

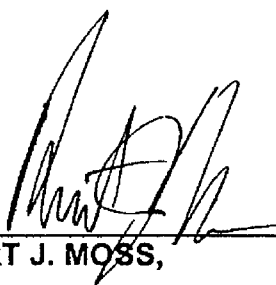
Vehicle Code section 21455.5(g) provides that a contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include a provision for payment of compensation to the manufacturer or supplier based on the number of citations generated or percentage of revenue generated as a result of use of the equipment. The purpose of the statute is to avoid an incentive to the camera operator, as a neutral evaluator of evidence, to increase the number of citations issued and paid through use of the equipment.

The contract at issue provides for payment of a flat monthly fee, but also provides that service fees can be negotiated "down or up, but not to exceed" the monthly rate "if it is determined that fees paid to NTS exceed net program

1 revenues being realized.” The provision that fees can be negotiated “up,” is
2 meaningless in light of the provision that fees are “not to exceed” the stated
3 monthly rate. However, the possibility that fees could be negotiated “down” if it is
4 determined fees paid to NTS exceed “net program revenues being realized,”
5 indirectly ties fees to NTS to the amount of revenue generated from the program. If
6 insufficient revenue is generated to cover the monthly fee, the fee could be
7 “negotiated down.” As such, NTS has an incentive to ensure sufficient revenues
8 are generated to cover the monthly fee.

9 Because the City’s contract with NTS violated Vehicle Code section
10 21455.5(g), the trial court erred in admitting evidence from the automated
11 enforcement system.

12 The judgment of the trial court is reversed, with instructions to dismiss the
13 citation. *People v. Kriss* (1979) 96 Cal.App.3d 913, 921. Because the judgment is
14 reversed for the reason discussed above, this court need not consider the other
15 arguments raised by appellant.

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22 ROBERT J. MOSS, Presiding Judge
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