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MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Via Facsimile and First Class Mail

April 30, 2015

The Honorable William H. Follett
Presiding Judge
Del Norte County Superior Court
450 H Street, #209
Crescent City, CA 95531
Fax: (707) 465-4005

Dear Presiding Judge Follett:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Del Norte County Superior Court has a policy of requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as “bail,” it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court’s policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

The Court's website states, in relevant part, that: "You may schedule a future court trial on an infraction by mail or by appearing in person, at the Traffic division clerk's office by your due date. Bail is required for court trials."²

Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Del Norte Superior Court's policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

First, requiring a "bail" deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause. (See *Brooks v. Small Claims Court* (1973) 8 Cal. 3d 661, 667.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. (See, e.g., *United States v. Good* (1993) 510 U.S. 43, 48, 53.)

Moreover, a criminal fine is a type of criminal punishment. (*Southern Union Co. v. United States* (2012) 567 U.S. ___, 132 S.Ct. 2344, 2350-51; *People v. Hanson* (2000) 23 Cal.4th 355, 360-63.) Due process prohibits the government from imposing criminal punishment "prior to an adjudication of guilt." (*Bell v. Wolfish*

² <http://www.delnorte.courts.ca.gov/divisions/traffic/requesting-trials>

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

(1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

And because Del Norte Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

For these reasons, we request that the Court promptly rescind its policy of requiring those accused of traffic infractions to pay "bail" or the full amount they would be required to pay if they were found guilty before they can receive a trial, and replace it with a policy that is fully publicized and made available to the public and that makes clear that the procedures set forth in Vehicle Code section 40519 are simply an alternative for persons who desire the convenience of making only a single appearance.

We will also be requesting records relating to the policy pursuant to Rule 10.500 of the California Rules of Court by sending an Administrative Records Request Form to the Court Administration office.

We ask that you respond to this letter by no later than May 28, 2015 to let us know how, if at all, the Court plans to change its policy. If you do not rescind this policy or if you fail to respond to this letter, we will have no choice but to consider all of our options, including but not limited to legal action. If we can provide any clarification please contact us by mail or via email at:
marley.degner@pillsburylaw.com or csun@aclunc.org.

Thank you for your time and attention to this matter.

Very truly yours,



Marley Degner, Esq.
Counsel
Pillsbury Winthrop Shaw Pittman LLP



Christine P. Sun, Esq.
Director of Legal and Policy Dept.
ACLU of Northern California



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Via Facsimile and First Class Mail

April 30, 2015

The Honorable Jon Conklin
Presiding Judge
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002
Fax: (559) 457-1810

Dear Presiding Judge Conklin:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Fresno County Superior Court has a policy of requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as "bail," it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court's policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

The Court's website states, in relevant part, that: "To contest an infraction violation, you must enter a not guilty plea, pay bail and request a trial. Requests can

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

be received either by mail or in person at the court listed on the bottom of the citation....**If you are found not guilty**, your bail is refunded by mail and is returned to the depositor at the address listed on the case." (emphasis in original).²

Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Fresno Superior Court's policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

First, requiring a "bail" deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause. (See *Brooks v. Small Claims Court* (1973) 8 Cal. 3d 661, 667.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. (See, e.g., *United States v. Good* (1993) 510 U.S. 43, 48, 53.)

Moreover, a criminal fine is a type of criminal punishment. (*Southern Union Co. v. United States* (2012) 567 U.S. ___, 132 S.Ct. 2344, 2350-51; *People v. Hanson* (2000) 23 Cal.4th 355, 360-63.) Due process prohibits the government from imposing criminal punishment "prior to an adjudication of guilt." (*Bell v. Wolfish*

² <http://www.fresno.courts.ca.gov/traffic/#2>.

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

(1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

And because Fresno Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

For these reasons, we request that the Court promptly rescind its policy of requiring those accused of traffic infractions to pay "bail" or the full amount they would be required to pay if they were found guilty before they can receive a trial, and replace it with a policy that is fully publicized and made available to the public and that makes clear that the procedures set forth in Vehicle Code section 40519 are simply an alternative for persons who desire the convenience of making only a single appearance.

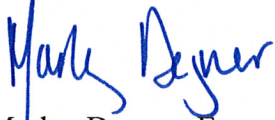
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Presiding Judge Jon Conklin
Fresno County Superior Court
April 30, 2015
Page 4

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Very truly yours,



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Christine P. Sun, Esq.
Director of Legal and Policy Dept.
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Via Facsimile and First Class Mail

April 30, 2015

The Honorable Ernest J. LiCalsi
Presiding Judge
Madera County Superior Court
209 West Yosemite Avenue
Madera, CA 93637
Fax: (559) 675-6565

Dear Presiding Judge LiCalsi:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Madera County Superior Court has a policy of requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as “bail,” it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court’s policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

The Court’s website states, in relevant part, that: “The typical case follows these steps:...6. If the Defendant would like to contest the matter, the Defendant is to

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

pay the amount of the proposed fine to the Court. This money is then placed in trust. If the Defendant is acquitted, the money is returned to the Defendant by the Court...."²

Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Madera Superior Court's policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

First, requiring a "bail" deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause. (See *Brooks v. Small Claims Court* (1973) 8 Cal. 3d 661, 667.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. (See, e.g., *United States v. Good* (1993) 510 U.S. 43, 48, 53.)

Moreover, a criminal fine is a type of criminal punishment. (*Southern Union Co. v. United States* (2012) 567 U.S. ___, 132 S.Ct. 2344, 2350-51; *People v. Hanson* (2000) 23 Cal.4th 355, 360-63.) Due process prohibits the government from imposing criminal punishment "prior to an adjudication of guilt." (*Bell v. Wolfish* (1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

² <http://www.madera.courts.ca.gov/MaderaProceduresTrafficLaw.htm>.

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

And because Madera Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

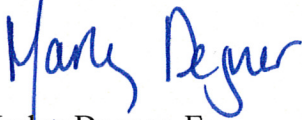
For these reasons, we request that the Court promptly rescind its policy of requiring those accused of traffic infractions to pay "bail" or the full amount they would be required to pay if they were found guilty before they can receive a trial, and replace it with a policy that is fully publicized and made available to the public and that makes clear that the procedures set forth in Vehicle Code section 40519 are simply an alternative for persons who desire the convenience of making only a single appearance.

We will also be requesting records relating to the policy pursuant to Rule 10.500 of the California Rules of Court by sending an Administrative Records Request Form to the Court Administration office.

We ask that you respond to this letter by no later than May 28, 2015 to let us know how, if at all, the Court plans to change its policy. If you do not rescind this policy or if you fail to respond to this letter, we will have no choice but to consider all of our options, including but not limited to legal action. If we can provide any clarification please contact us by mail or via email at:
marley.degner@pillsburylaw.com or csun@aclunc.org.

Thank you for your time and attention to this matter.

Very truly yours,



Marley Degner, Esq.
Counsel
Pillsbury Winthrop Shaw Pittman LLP



Christine P. Sun, Esq.
Director of Legal and Policy Dept.
ACLU of Northern California



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Via Facsimile and First Class Mail

April 30, 2015

The Honorable F. Dana Walton
Mariposa County Superior Court
5088 Bullion Street
P. O. Box 28
Mariposa, CA 95338
Fax: (209) 742-6860

Dear Presiding Judge Walton:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Mariposa County Superior Court has a policy of requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as “bail,” it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court’s policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

The Court’s website states, in relevant part, that: “If you want to contest an infraction ticket...you must enclose the amount of the bail stated on your courtesy

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

notice. This money is placed in trust until disposition of your case. You will be notified of the Court Trial date by mail. If you are found 'not guilty' the bail posted will be returned to you. If you are found 'guilty' the bail will be forfeited."²

Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Mariposa Superior Court's policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

First, requiring a "bail" deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause. (See *Brooks v. Small Claims Court* (1973) 8 Cal. 3d 661, 667.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. (See, e.g., *United States v. Good* (1993) 510 U.S. 43, 48, 53.)

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² http://mariposacourt.org/Dept_Traffic.htm#dt03.

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

(1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

And because Mariposa Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

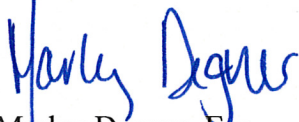
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Thank you for your time and attention to this matter.

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Via Facsimile and First Class Mail

April 30, 2015

The Honorable David Nelson
Presiding Judge
Mendocino County Superior Court
100 North State Street
Ukiah, CA 95482
Fax: (707) 468-3459

Dear Presiding Judge Nelson:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Mendocino County Superior Court has a policy of requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as "bail," it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court's policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

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your due date. Bail is required for court trials. To request your court trial in person, you must bring in your courtesy notice...along with the bail amount listed on your courtesy notice."²

Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Mendocino Superior Court's policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

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² <http://www.mendocino.courts.ca.gov/traffic.html#10>.

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

(1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

And because Mendocino Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

For these reasons, we request that the Court promptly rescind its policy of requiring those accused of traffic infractions to pay "bail" or the full amount they would be required to pay if they were found guilty before they can receive a trial, and replace it with a policy that is fully publicized and made available to the public and that makes clear that the procedures set forth in Vehicle Code section 40519 are simply an alternative for persons who desire the convenience of making only a single appearance.

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Thank you for your time and attention to this matter.

Very truly yours,



Marley Degner, Esq.
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Pillsbury Winthrop Shaw Pittman LLP



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ACLU of Northern California



Pillsbury Winthrop Shaw Pittman LLP
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MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Via Facsimile and First Class Mail

April 30, 2015

The Honorable Gregory S. Gaul
Presiding Judge
Shasta County Superior Court
1500 Court Street
Redding, CA 96001
Fax: (530) 605-2802

Dear Presiding Judge Gaul:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Shasta County Superior Court has a local rule requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as “bail,” it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court’s local rule is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

Local Rule 11.03, titled “SCHEDULING AND BAIL” states: “All defendants requesting an infraction court trial shall post bail pursuant to Vehicle Code section

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

40519 and only upon receipt of bail shall a date for trial be set. The requirement to post bail can only be waived by the court under unusual circumstances where the interest of justice so requires. The posting of bail is necessary to guarantee the appearance of the defendant and to apply toward the payment of any fine or assessment prescribed by the court in the event of conviction. Bail shall include all assessments under section 42006 of the Vehicle Code and section 1464 of the Penal Code." The Court's website is also clear that those charged with infractions who wish to contest their citation must post the full "bail" amount. The website states, in relevant part, that: "If you choose to contest your citation, you must enter a plea of not guilty and post the full bail amount of your case, pursuant to California Vehicle Code 40519(a),(b),(c)." ²

Vehicle Code section 40519 does not authorize this rule. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Shasta Superior Court's local rule requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

First, requiring a "bail" deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause. (See *Brooks v. Small Claims Court* (1973) 8 Cal. 3d 661, 667.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government

² <http://www.shastacourts.com/menu.php?page=traffic&anchor=Citation#Citation>.

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

deprives them of property. (See, e.g., *United States v. Good* (1993) 510 U.S. 43, 48, 53.)

Moreover, a criminal fine is a type of criminal punishment. (*Southern Union Co. v. United States* (2012) 567 U.S. ___, 132 S.Ct. 2344, 2350-51; *People v. Hanson* (2000) 23 Cal.4th 355, 360-63.) Due process prohibits the government from imposing criminal punishment “prior to an adjudication of guilt.” (*Bell v. Wolfish* (1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

And because Shasta Superior Court’s local rule creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com’rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

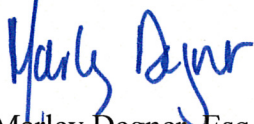
For these reasons, we request that the Court promptly rescind its local rule requiring those accused of traffic infractions to pay “bail” or the full amount they would be required to pay if they were found guilty before they can receive a trial, and replace it with a rule that is fully publicized and made available to the public and that makes clear that the procedures set forth in Vehicle Code section 40519 are simply an alternative for persons who desire the convenience of making only a single appearance.

We will also be requesting records relating to the local rule pursuant to Rule 10.500 of the California Rules of Court by sending an Administrative Records Request Form to the Court Administration office.

We ask that you respond to this letter by no later than May 28, 2015 to let us know how, if at all, the Court plans to change its rule. If you do not rescind this local rule or if you fail to respond to this letter, we will have no choice but to consider all of our options, including but not limited to legal action. If we can provide any clarification please contact us by mail or via email at:
marley.degner@pillsburylaw.com or csun@aclunc.org.

Thank you for your time and attention to this matter.

Very truly yours,



Marley Degner, Esq.
Counsel
Pillsbury Winthrop Shaw Pittman LLP



Christine P. Sun, Esq.
Director of Legal and Policy Dept.
ACLU of Northern California



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Via Facsimile and First Class Mail

April 30, 2015

The Honorable Gary L. Paden
Tulare County Superior Court
221 South Mooney Boulevard
Visalia, CA 93291-4593
Fax: (559) 737-4290

Dear Presiding Judge Paden:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Tulare County Superior Court has a policy requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as "bail," it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court's policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

The Court's website states, in relevant part, that: "To contest your citation, you must enter a plea of not guilty and submit the full bail amount. You may request a hearing by court trial or written trial by filing a declaration at the clerk's office. For

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

any infraction that does not require a mandatory appearance, you may request a hearing through the mail. Mail your request....Include the following:...Full bail amount as indicated on your courtesy notice."²

Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require "bail" as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Tulare Superior Court's policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

First, requiring a "bail" deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause. (See *Brooks v. Small Claims Court* (1973) 8 Cal. 3d 661, 667.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. (See, e.g., *United States v. Good* (1993) 510 U.S. 43, 48, 53.)

Moreover, a criminal fine is a type of criminal punishment. (*Southern Union Co. v. United States* (2012) 567 U.S. ___, 132 S.Ct. 2344, 2350-51; *People v. Hanson* (2000) 23 Cal.4th 355, 360-63.) Due process prohibits the government from imposing criminal punishment "prior to an adjudication of guilt." (*Bell v. Wolfish*

² <http://www.tularesuperiorcourt.ca.gov/index.php?section=traffic#drill>.

³ The bulk of the so-called "bail" consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

(1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

And because Tulare Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

For these reasons, we request that the Court promptly rescind its policy of requiring those accused of traffic infractions to pay "bail" or the full amount they would be required to pay if they were found guilty before they can receive a trial, and replace it with a policy that is fully publicized and made available to the public and that makes clear that the procedures set forth in Vehicle Code section 40519 are simply an alternative for persons who desire the convenience of making only a single appearance.

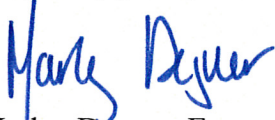
We will also be requesting records relating to the policy pursuant to Rule 10.500 of the California Rules of Court by sending an Administrative Records Request Form to the Court Administration office.

We ask that you respond to this letter by no later than May 28, 2015 to let us know how, if at all, the Court plans to change its policy. If you do not rescind this policy or if you fail to respond to this letter, we will have no choice but to consider all of our options, including but not limited to legal action. If we can provide any clarification please contact us by mail or via email at:
marley.degner@pillsburylaw.com or csun@aclunc.org.

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Very truly yours,



Marley Degner, Esq.
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Via Facsimile and First Class Mail

April 30, 2015

Presiding Judge Donald Segerstrom
Historic Courthouse – Department 1 – Third Floor
41 W. Yaney Avenue
Sonora, California 95370
Fax: (209) 533-6616

Dear Presiding Judge Segerstrom:

We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. It has come to our attention that the Tuolumne County Superior Court has a policy of requiring those accused of traffic infractions to pay the full amount they would be required to pay if they were found guilty before they can have a trial, even if they are willing to appear for separate arraignment and trial dates. Although this amount is referred to as “bail,” it does not function as bail (because it is not a condition of release) and is in fact composed of criminal fines, penalty assessments, and other surcharges that are used as a revenue-collection tool.¹

As described below, because the Court’s policy is not authorized by Vehicle Code section 40519 and violates the constitutional rights to due process and equal protection, we are asking the Court to rescind it immediately.

The Court’s website states, in relevant part, that: “You will be asked to deposit the bail amount due at the time of your request for a trial,” purportedly “pursuant to

¹ See *Not Just a Ferguson Problem How Traffic Courts Drive Inequality in California*, at 10 (April 8, 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

California Vehicle Code Section 40519.”² However, Vehicle Code section 40519 does not authorize this policy. Rather, the statute merely allows defendants who desire the convenience of being arraigned and tried on the same day to do so, on the condition that they first post an amount equal to the amount they would be liable to pay if they were found guilty. (*People v. Prince* (1976) 55 Cal.App.Supp. 19, 30-31.) Nothing in the statute allows the Court to require “bail” as a condition for trial of persons who are willing to appear at a separate arraignment. Those who do not seek the convenience of an arraignment and trial on the same date should not be required to pay the full amount they would be required to pay if they were found guilty before their trial, any more than any other criminal defendant would have to pay fines before conviction.

The Tuolumne Superior Court’s policy of requiring defendants to pay these penalties³ before a trial date will be set in every traffic infraction matter not only goes beyond what Vehicle Code section 40519 allows, it violates the Fourteenth Amendment to the U.S. Constitution as well as Article I, section 7 of the California Constitution by depriving people of property without due process of law.

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Moreover, a criminal fine is a type of criminal punishment. (*Southern Union Co. v. United States* (2012) 567 U.S. ___, 132 S.Ct. 2344, 2350-51; *People v. Hanson* (2000) 23 Cal.4th 355, 360-63.) Due process prohibits the government from imposing criminal punishment “prior to an adjudication of guilt.” (*Bell v. Wolfish* (1979) 441 U.S. 520, 535; see *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-66; *Wing Wong v. United States* (1896) 163 U.S. 228, 237.)

² <http://www.tuolumne.courts.ca.gov/divisions/traffic.shtml>

³ The bulk of the so-called “bail” consists of penalty assessments and other surcharges, such as the DNA Identification Fund penalty and the state court construction penalty. See e.g. <http://www.riverside.courts.ca.gov/uniformbail.pdf>.

And because Tuolumne Superior Court's policy creates two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (See *Payne v. Superior Court* (1976) 17 Cal. 3d 908, 919, 923; see also *Tucker v. City of Montgomery Bd. of Com'rs* (M.D. Ala. 1976) 410 F. Supp. 494, 502-503).

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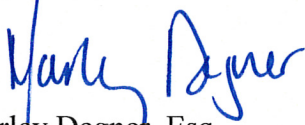
We have also requested records relating to the policy pursuant to Rule 10.500 of the California Rules of Court by sending an Administrative Records Request Form to the Court Administration office. A copy of the Administrative Records Request is enclosed for your convenience. Note that because the link to the Administrative Records Request form on the Court's website is broken (and has been for several months despite our telephone calls to the Court), we have created our own form in submitting this request.

We ask that you respond to this letter by no later than May 28, 2015 to let us know how, if at all, the Court plans to change its policy. If you do not rescind this policy or if you fail to respond to this letter, we will have no choice but to consider all of our options, including but not limited to legal action. If we can provide any clarification please contact us by mail or via email at:
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Enclosure