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Date:	April 30, 2015	Must Be Sent By:	
To:	The Honorable Jon Conklin	Fax No:	(559) 457-1810
Company:	Presiding Judge, Fresno County Superior Court	Phone No:	(559) 457-1802
From:	Marley Degner	Phone No:	415.983.1186
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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.<sup>1</sup>

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

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<sup>1</sup> 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).<sup>2</sup>

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 penalties<sup>3</sup> 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*

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

<sup>3</sup> 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>.



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(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.

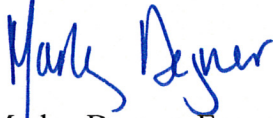
We will also be requesting records relating to the policy pursuant to Rule 10.500 of the California Rules of Court by sending an Administrative Records Request Form to the Court Administration office.

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](mailto:marley.degner@pillsburylaw.com) or [csun@aclunc.org](mailto:csun@aclunc.org).

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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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