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5 Attorneys for the Plaintiff,  
THE PEOPLE OF THE STATE OF CALIFORNIA  
6  
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES, NORTHWEST JUDICIAL DISTRICT  
10

11  
12 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: CJ56370

13 Plaintiff,

14 vs.

15 COREY EIB,

16 Defendant

)  
) **PEOPLE'S OPPOSITION TO**  
) **DEMURRER; MEMORANDUM OF**  
) **POINTS AND AUTHORITIES**

)  
) DATE: June 22, 2016  
) TIME: 8:30 a.m.,  
) DEPT: 102  
)

17  
18  
19 TO THIS HONORABLE COURT AND THE DEFENDANT IN PROPRIA PERSONA:

20 The People of the State of California hereby oppose the Demurrer filed by COREY EIB  
21 (hereinafter referred to as "the Defendant"). The Complaint in this case is sufficient on its face.  
22 All of Defendant's other arguments are without merit

23 This Opposition is based on the following memorandum of Points and Authorities, the  
24 court's file in this matter, and any other and further argument that may be had at the hearing of  
25 Defendant's Demurrer.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 **INTRODUCTION**

4 On or about November 25, 2015, the Defendant was stopped by CHP Officer Bemiller  
5 while driving on the northbound I-405, north of Mullholland Dr., and issued a Notice to Appear,  
6 # CJ56370, citing Defendant for violations of Vehicle Code sections 12500(a), [unlicensed  
7 driver], 4000(a)(1) [expired vehicle registration] and 16028(a) [driving with no proof of  
8 insurance]. (A copy of the Notice to Appear, # CJ56370, is attached hereto as Exhibit 1). After  
9 continuing his arraignment two times, the Defendant has now asked this court to consider his  
10 Demurrer to the Complaint. As will be shown below, Defendant's Demurrer is without merit  
11 and should be overruled in its entirety.

12  
13 **ARGUMENT**

14 **I.**

15 **A DEMURRER RAISES ONLY AN ISSUE OF LAW AS TO THE**  
16 **SUFFICIENCY OF AN ACCUSATORY PLEADING ON ITS FACE**

17 Penal Code section 1004 provides that the defendant may demur to the accusatory  
18 pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

- 19 1. If an indictment, that the grand jury by which it was found had no legal  
20 authority to inquire into the offense charged, or, if an information or  
21 complaint that the court has no jurisdiction of the offense charged therein;  
22 2. That it does not substantially conform to the provisions of §§ 950 and 952,  
23 and also § 951 in case of an indictment or information;  
24 3. That more than one offense is charged, except as provided in § 954;  
25 4. That the facts stated do not constitute a public offense;  
26 5. That it contains matter which, if true, would constitute a legal justification  
27 or excuse of the offense charged, or other legal bar to the prosecution.  
28

1 In the instant case, Defendant's Demurrer states that it is brought pursuant to subdivisions  
2 2, 4, and 5, but Defendant's pleading makes no argument as to how the Complaint in this case is  
3 defective under Penal Code section 1004. Defendant's only comment about the Complaint itself  
4 is in point VIII (Demurrer, 4:17 – 5:8) where Defendant argues that his name and address as  
5 written by CHP Officer Bemiller on the Notice to Appear are incorrect, and that somehow  
6 entitles him to some relief. Defendant is mistaken.

7  
8 **A. The Notice To Appear Used By CHP Officer Bemiller Constitutes A Valid**  
9 **Complaint In This Case**

10 A criminal proceeding is commenced by an "accusatory pleading," and in misdemeanor  
11 prosecutions it is a complaint. (Cal. Pen. Code § 950; Cal. Pen. Code § 949, 4 Witkin, *supra*, §  
12 6, pp. 11-12.) Penal Code section 19.7 provides, in relevant part: "[A]ll provisions of law  
13 relating to misdemeanors shall apply to infractions including but not limited to powers of peace  
14 officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial  
15 and burden of proof." The procedure for commencing an action for a violation of the Vehicle  
16 Code is ascribed under Section 40500, which provides that an officer may issue a Notice to  
17 Appear upon a determination that any violation of the code has been committed. A written  
18 Notice to Appear, delivered and filed with the Court, constitutes a complaint. (Cal. Veh. Code §  
19 40513(a).) The Notice to Appear must contain the following: "the name and address of the  
20 person, the license number of his or her vehicle, if any, the name and address, when available, of  
21 the registered owner or lessee of the vehicle, the offense charged and the time and place when  
22 and where he or she shall appear." (Vehicle Code §40500(a).) These requirements substantially  
23 mirror the requirements for a misdemeanor complaint under Penal Code section 950 which  
24 simply requires: (1) the title of the action and names of the parties; and (2) a statement of the  
25 public offenses charged therein.

26 Defendant claims that his name and address on the Notice to Appear are not correct.  
27 However, looking at Defendant's record with the DMV, the information contained on the Notice  
28 to Appear is the same as on his most recent DMV record. (Defendant's DMV record is attached

1 hereto as Exhibit 2.) Defendant's claim that the information on his DMV record is not correct,  
2 and/or his address has not been updated (Demurrer, 5:18-27), is an admission that he has also  
3 violated Vehicle Code section 14600, which provides that when a person who has received a  
4 drivers license moves to a new residence, or acquires a new mailing address, he *shall within 10*  
5 *days thereafter* notify the department of both the old and new address. Then, when the  
6 presenting his license for examination upon demand of a police officer under Vehicle Code  
7 section 12951(b), the driver must also present the document issued by the DMV showing the  
8 change of address if the license in the driver's possession does not reflect the driver's current  
9 residence or mailing address. (Vehicle Code section 14600(b).)

10 Perhaps the People should amend the Complaint to add this violation.  
11

12 **B. The Other Issues Raised By Defendant Are Not Reached By Demurrer**

13 It is well settled that a demurrer is a pleading which raises an issue of law as to the  
14 sufficiency of an accusatory pleading. (*Shortridge v. Municipal Court* (1984) 151 Cal.App.3d  
15 611, 616; *People v. Dury* (1983) 152 Cal.App.3d Supp. 23, 27; *People v. Hale* (1965) 232  
16 Cal.App.2d 112, 120.) A demurrer lies only for defects appearing on the face of the accusatory  
17 pleading. (Cal. Pen. Code § 1004; *People v. Williams* (1979) 97 Cal.App.3d 382, 387-88; *Dury*,  
18 *supra*, 152 Cal.App.3d at Supp. 27.) It is not an appropriate vehicle to measure the sufficiency  
19 of the evidence or to test a question of fact outside the scope of the pleadings. (*Hale, supra*, 232  
20 Cal.App.2d at 120; *People v. McAllister* (1929) 99 Cal.App. 37, 40-44 ("Section 1004 of the  
21 Penal Code describes five grounds of demurrer . . . . In none of these subdivisions is the  
22 sufficiency of the evidence . . . made of consequence for the purposes of demurrer).)  
23 "Evidentiary matters are not reached by a demurrer." (*Dury, supra*, 152 Cal.App.3d at Supp.  
24 27.)

25  
26 **1. The Notice to Appear Complies With The Requirements of Due Process**

27 In Defendant's Paragraph IV (Demurrer, 3: 12 – 21), the Defendant raises the issue of  
28 Due Process. All that due process requires is that an accused be given notice of the charges

1 against him (*In re Hess* (1955) 45 Cal.2d 171, 175.) It is not the function of criminal pleadings  
2 to provide the defendant with notice of the particular circumstances of the charge. (*People v.*  
3 *Washington* (1971) 17 Cal.App.3d 470, 475; *People v. Marshall* (1957) 48 Cal.2d 394, 399 fn.  
4 5.) Thus, the charges must contain in substance a statement that the accused has committed  
5 some public offense. (Cal. Pen. Code § 952; *People v. Bright* (1996) 12 Cal.4th 652, 670.) The  
6 statement may be phrased in the words of the statute describing the offense or in any other  
7 words sufficient to afford notice to the accused of the offense charged, so that he may have a  
8 reasonable opportunity to prepare and present a defense. (*Ibid.*) This is undoubtedly the  
9 simplest, and appears to be the most common, method of pleading; and the charge is sufficient  
10 even though, by this method, it contains conclusions of law. (*Ratner v. Municipal Court* (1967)  
11 256 Cal.App.2d 925, 929.)

12 The Complaint (Notice to Appear) in this case uses the words of the statute in describing  
13 the offense committed by the defendant, to wit:

"12500(a) VC Unlicensed Driver	M"	(Misdemeanor)
" 4000(a)(1)VC Exp. Reg.	I"	(Infraction)
"16028(a) VC No Proof of Insurance	I"	(Infraction)

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18 Thus, the Notice to Appear in this case complies with the requirements of section 952 and  
19 sufficiently gives the defendant notice of the offense of which he is accused.  
20

21 **2. Whether Or Not The Cited Violations Apply To The Defendant Is A Question Of**  
22 **Fact, and Not Reached By Demurrer**

23 As stated previously, demurrer under Penal Code section 1004 is limited in scope and may  
24 not challenge the sufficiency of the evidence against a defendant. Defendant claims that he is  
25 not a person described in Vehicle Code section 21052 (Paragraph V, Demurrer 3:22 – 4:2), He  
26 also seems to be challenging the ownership status of the public roads and highways. (Paragraph  
27 VI, Demurrer 4:3-12.) Then Defendant asserts that it is not necessary to register the vehicle he  
28

1 was driving. (Paragraph VII, Demurrer, 4:13-16.) The answer to all of these questions are  
2 factual in nature – none of them can be reached by Demurrer.

3 “ . . . [A] demurrer tests only defects existing on the face of the  
4 indictment . . . . The question of whether the defendants did [certain  
5 acts], and if so, for how long, is one of fact not law and therefore  
6 should be decided by a jury . . . .” A demurrer, however, is not a  
7 proper means to test the sufficiency of evidence.”

8 (*Id.* at 391; *McAllister, supra*, 99 Cal.App. at 40, 44.)

9 Again, the defendant has failed to address any particular language contained in the  
10 complaint which would fail to state a public offense as required by Penal Code section 1004.  
11 Whether the actions of the defendant violated the charge against him is a question of fact, not of  
12 law, and therefore should be decided by a trier of fact. (*See Williams, supra*, 97 Cal.App.3d at 391.)  
13 A demurrer, however, is not a proper means for the defendant to test the sufficiency of evidence  
14 against him and any argument made by Defendant related to the facts of the violation itself is  
15 not properly brought through demurrer. (*See Ibid.*)

16  
17 **3. Defendant’s Quotation of Five Paragraphs from the Syllabus of U.S. Supreme**  
18 **Court Case *Texas v. White* is Historically Interesting But Completely**  
19 **Irrelevant**

20 Without providing any context, Defendant cited to five paragraphs from the Syllabus  
21 portion of the U.S. Supreme Court case *Texas v. White*, (1869) 74 U.S. 700. This case, decided  
22 before California became a State,<sup>1</sup> involved Treasury bonds that were issued to the State of  
23 Texas by the United States, payable to the State of Texas or bearer, and redeemable after  
24 December 31, 1864. (*Id.* at 717.) Pursuant to an act of the Texas Legislature, the bonds were  
25 deposited in the treasury of the State of Texas, and must be indorsed by the Governor of the  
26 State of Texas to be payable. (*Id.* at 718.) Most of the bonds were indorsed and sold according  
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<sup>1</sup> California became the 31<sup>st</sup> State of the United States on September 9, 1850.

1 to law, but a part of them were still in the treasury of Texas in January 1861 when “the late  
2 Southern rebellion broke out.” (*Ibid.*) On March 4, 1861, after an election, an ordinance of  
3 secession was ratified and Texas withdrew from the United States and took an oath to support  
4 the provisional government of the Confederate States. (*Ibid.*) The legislature of the usurping  
5 government of Texas then passed an act to sell bonds in the State treasury for use during the  
6 Civil War, and repealed the act requiring the bonds be indorsed by the governor. (*Ibid.*) Bonds  
7 were delivered to White & Chiles, bankers in England, and none of them was indorsed by any  
8 governor of Texas. (*Ibid.*) In 1865 the rebel forces were disbanded and the United States  
9 sought to Reconstruct Texas. (*Id.* at 1729.) In 1866 the State passed an ordinance looking to  
10 recover the bonds and filed for an injunction to restrain the ultimate holders of the bonds from  
11 receiving payment from the United States, and to compel that they be surrendered to the State of  
12 Texas. (*Id.* at 717 - 19.) One of the questions presented in the case was whether the State of  
13 Texas, having seceded from the Union, so far changed its status that it did not have jurisdiction  
14 to bring a lawsuit in a court of the United States. (*Id.* at 719.) After discussing the changes in  
15 the State of Texas over the period of the Civil War, the U.S. Supreme Court ruled that the  
16 actions of the rebellion in Texas to secede from the United States were without operation of law  
17 (*Id.* at 726) “When, therefore, Texas became one of the United States, she entered into an  
18 indissoluble relation.” (*Id.* at 726.) “The Constitution, in all its provisions, looks to an  
19 indestructible Union, composed of indestructible States.” (*Id.* at 725.) While the Court  
20 recognized the right of Texas to have a republican form of government throughout the Civil  
21 War, the actions the rebel government took during the Civil War to sell the bonds for the  
22 purpose of levying war against the United States was unlawful (treasonable). (*Id.* at 733.) The  
23 Court ruled that the State of Texas was entitled to return of the bonds. (*Id.* at 736.)

24 While a case of historical significance. *Texas v. White* has no application to the case at  
25 bar.

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1           **4. The Paragraphs Challenging This Court's Jurisdiction Over This Case Are**  
2           **Confused and Flawed**

3           Pages 11 and 12 of Defendant's Demurrer appear to be a compilation of nonsense,  
4 challenging this Court's jurisdiction over this case. According to Defendant's DMV record, he  
5 was issued a California identification card on 10/31/2007, and a drivers license on 05/28/2009,  
6 both currently expired. Defendant listed his mailing and residence address as 1278 Glenneyre,  
7 Apt. 261, Laguna Beach, CA 92651. Defendant's address is within the defined boundaries and  
8 borders of the State of California,<sup>2</sup> and the Court can take judicial notice that Defendant was  
9 driving within the City of Los Angeles, State of California.

10           Defendant's concern that he is being mistaken for a State employee, referred to in Veh.  
11 Code section 21052 is misguided, as the charges filed against the Defendant are not found in  
12 Division 11 of the Vehicle Code [Rules of the Road], which apply to any operation of vehicles  
13 upon the highways, unless otherwise specified. (Veh. Code section 21001.)

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22 <sup>2</sup> *California Constitution of 1849, Article XII states, "The Boundary of the State of California shall be as*  
23 *follows : Commencing at this point of intersection of 42d degree of north latitude with the 120<sup>th</sup> degree*  
24 *of longitude west from Greenwich, and running south on the line of said 120<sup>th</sup> degree of west longitude*  
25 *until it intersects the 39<sup>th</sup> degree of north latitude; thence running in a straight line in a south easterly*  
26 *direction to the River Colorado, at a point where it intersects the 35<sup>th</sup> degree of north latitude; thence*  
27 *down the middle of the channel of said river, to the boundary line between the United States and*  
28 *Mexico, as established by the Treaty of May 30<sup>th</sup>, 1848; thence running west and along said boundary*  
*line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly*  
*direction, and following the direction of the Pacific Coast to the 42d degree of north latitude, thence on*  
*the line of said 42d degree of north latitude to the place of beginning. Also all the islands, harbors, and*  
*bays, along adjacent to the Pacific Coast."*



1 **CONCLUSION**

2 Based on the foregoing and any further argument that may be presented at the time of the  
3 hearing, the People urge that Defendant's Demurrer be overruled.  
4

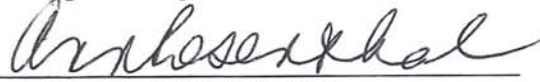
5 DATE: June 10, 2016

Respectfully submitted,

6 MICHAEL N. FEUER, City Attorney

7 RICHARD SCHMIDT,

Supervising Assistant City Attorney

8 By 

9 ANN J. ROSENTHAL

10 Deputy City Attorney

11 Attorneys for Plaintiff

12 PEOPLE OF THE STATE OF CALIFORNIA  
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CJ 56370

MISDEMEANOR  
 Traffic  Nontraffic

Date of Violation: 11-25-15 Time: 5:30 AM  PM  Day of the Week: S M T **W** T F S  CHP 215s  Accident

Name (First, Middle, Last): COREY BRANDON EIR  Owner's Responsibility (§40001 VC)

Address: 1278 GLENNEYRE #261

City: LAGUNA BEACH State: CA ZIP Code: 92651

Driver Lic. No.: C5595110 (EXP) State: CA Commercial:  Yes  No Age: 69 Birth Date: 09-21-69

Sex: M Hair: BL Eyes: HZ Height: 5-10 Weight: 195 Race/Ethnicity: W

Veh. Lic. No. or VIN No.: 3C8FY78G45T54 State: Reg Exp.  COMMERCIAL VEHICLE (§15210(b) VC)  HAZARDOUS MATERIAL (§353 VC)

Yr. of Veh.: 2005 Make: CHEV Body Style: PT Color: GRAY Veh. Type: 01

Evidence of Financial Responsibility or CHP/DOT/PUC/ICC: 3 NONE

Registered Owner or Lessee: AMAR IBRIS  Same as Driver

Address: 3637 CALLE CANON  Same as Driver

City: CALABASAS State: CA ZIP Code: 91302

Correctable Violation (§40610 VC)  Booking Required (See Reverse) Misdemeanor or Infraction (Circle)

Yes	No	Code and Section	Description	Misdemeanor or Infraction (Circle)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	12500(a) VC	UNLICENSED DRIVER	M
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4000(a)(1) VC	EXP REG	M
<input type="checkbox"/>	<input checked="" type="checkbox"/>	16028(a) VC	NO PROOF OF INSURANCE	M
<input type="checkbox"/>	<input type="checkbox"/>			M I

Speed Approx.: 65 P.F./Max Spd. Veh. Lmt. Safe Special

Location of Violation(s) at: I-15 405 NO MULTIVILLAGE

Beat: 404 Area: 580 Perm. Area:  Radar/Lidar Unit/Patrol Vehicle No.: 2175  MVARs

Violations not committed in my presence, declared on information and belief.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. Executed at (place): LA CITY, California

Dec. Date: 11-25-15 Arresting or Citing Officer: S. REMILLER I.D. No.: 21079 to

Dec. Date: Perm Area: to Name of Arresting Officer, if different from Citing Officer: I.D. No.: Vacation Dates

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW. X SIGNATURE: [Signature]

WHEN: DATE: 02/25/16 TIME: 8:30 AM  PM

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE

WHERE: 9425 PENFIELD AVE  SUPERIOR COURT  JUVENILE

ADDRESS: CHATSWORTH, CA 91311 (14400 ERWIN ST MALL PL 2 VAN NUYS, CA 91401)

PHONE NO.: (213) 742-1884

To be notified  You may arrange with the clerk to appear at a night session of the court. Judicial Council of California Form TR-130 Rev. 06-26-15 (§§ 40500(b), 40513(b), 40522, 40600 VC; § 853.9 PC.) SEE REVERSE



CJ56370

EXHIBIT 1

IN

DATE:06-10-16\*TIME:11:14\*

MATCHED ON:\*L/N\*F/N

DMV RECORD FOR LAW ENFORCEMENT USE ONLY

DL/NO:C5595110\*B/D:06-21-1969\*NAME:EIB COREY BRANDON\*

MAIL ADDR AS OF 05-28-09:1278 GLENNEYRE APT 261 LAGUNA BEACH 92651\*

RES/ADDR:1278 GLENNEYRE APT261 LAGUNA BEACH\*

OTH/ADDR AS OF 01-12-10:1278 GLENNEYRE 261 LAGUNA BEACH \*

AKA:ELB COREY BRANDON\*

IDENTIFYING INFORMATION:

SEX:MALE\*HAIR:BLOND\*EYES:HSL\*HT:5-10\*WT:195\*

ID CARD MLD:10-31-07\*EXPIRES:06-21-10\*

ID DUP OR NO FEE ISS:10-19-07\*

LIC/ISS:05-28-09\*EXPIRED\*CLASS:C NON-COMMERCIAL\*

ENDORSEMENTS:NONE\*

LATEST APP:

DL TYPE:RENEWAL\*ISS/DATE: 05-28-09\*OFFICE: SNC\*BATES:POL\*

ORGAN AND TISSUE DONOR: YES UPDATED:05-28-09

LICENSE STATUS:

SUSPENDED OR REVOKED

SERVICE NEEDED, SEE HISTORY BELOW\*

DEPARTMENTAL ACTIONS:

DRV LIC SUSPENDED \*EFF:02-03-10\*ORDER MAILED:01-04-10\*AUTH:13365 \*

REASON:FAIL TO APPEAR NOTICE\*SERVICE:A/01-04-10\*

MAILED, NOT RETURNED UNCLAIMED\*

VERBAL OR PERSONAL SERVICE NEEDED\*

CONVICTIONS:

VIOL/DT	CONV/DT	SEC/VIOL	DKT/NO	DISP	COURT	VEH/LIC
06-14-13	01-23-14	12500A VC	*IRM451	C	30460	1301197
		405095 VC	*FAILURE TO PAY FINE			
			FINE AMOUNT DUE \$ 727			

DMV POINT COUNT 0

FAILURES TO APPEAR:

NONE

ACCIDENTS:

NONE

END

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EXHIBIT 2

1 **PROOF OF SERVICE**

2 I, Ann J. Rosenthal, declare as follows: That I am a citizen of the United States and a  
3 resident of the County of Los Angeles; that I am over the age of eighteen years and I am not a  
4 party to the within action or proceeding; that my office address is: Los Angeles City Attorney's  
5 Office, 6262 Van Nuys Blvd., Room 160, Van Nuys, California 91401.

6 That on June 10, 2016, I served the within PEOPLE'S OPPOSITION TO DEMURRER;  
7 MEMORANDUM OF POINTS AND AUTHORITIES, EXHIBITS as indicated below:

8  By mailing a true copy addressed to the person(s) indicated below. I am readily  
9 familiar with the City Attorney's Office's practice for collection and processing of  
10 documents for mailing with the United States Postal Service. This envelope was sealed  
11 and placed for collection and mailing on the date indicated hereon, following ordinary  
12 business practices. The documents are then deposited with the United State Postal  
13 Service that same day they are postmarked, in the ordinary course of business.

14  By facsimile to the person(s) and fax number(s) indicated below. The facsimile  
15 machine I used complied with California Rules of Court, Rule 2003, and the facsimile  
16 transmission described above was reported as complete and without error. A copy of the  
17 facsimile transmission report is attached to the original Proof of Service filed with the  
18 Court.

19  By personal service to the person(s) indicated below.

20 Corey Eib  
21 16045 Sherman Way, # H-63  
22 Van Nuys, CA 91406

23 I declare under the penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct.

25 Executed on June 10, 2016, at Van Nuys, California.

26  
27  
28 \_\_\_\_\_  
ANN J. ROSENTHAL  
Declarant