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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF EL DORADO
13

14	_____)	No.
15	MATTHEW VAUGHN,)	
16)	PETITION FOR ALTERNATIVE
17	Petitioner,)	WRIT OF MANDAMUS;
18)	REQUEST FOR STAY OF
19	v.)	PROCEEDINGS;
20	DIRECTOR, DEPARTMENT OF MOTOR)	MEMORANDUM OF POINTS
21	VEHICLES,)	AND AUTHORITIES
22)	(NON-DUI)
23	Respondent,)	No Hearing Scheduled
24	_____)	

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9 Petitioner,) **PETITION FOR ALTERNATIVE**
10 v.) **WRIT OF MANDAMUS;**
11) **REQUEST FOR STAY OF**
12) **PROCEEDINGS;**
13) **MEMORANDUM OF POINTS**
14) **AND AUTHORITIES**
15) **(NON-DUI)**
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16 **PETITION WITH MEMORANDUM OF POINTS AND AUTHORITIES**

18 **INTRODUCTION**

19 To the great misfortune of medical marijuana patients throughout the state, some
20 branches of the Department of Motor Vehicles (“DMV”) have a policy of suspending or
21 revoking the driver’s licenses of medical marijuana patients based solely on their status as such.
22 In this case, the DMV suspended the driver’s license of Petitioner Matthew Vaughn (“Vaughn”)
23 because he uses marijuana to treat symptoms associated with glaucoma upon the
24 recommendation of his physician. During a routine traffic stop, a California Highway Patrol
25 (“CHP”) Officer learned that Vaughn was a medical marijuana patient. He did not cite Mr.
26 Vaughn for driving under the influence of marijuana, since he was not. Instead, the CHP officer
27
28

1 returned to the station and conducted his own internet research. After finding a website that
2 counsels against the treatment of glaucoma with marijuana, the officer referred Vaughn to the
3 DMV for a license reexamination, despite the fact that the Compassionate Use Act expressly
4 identifies glaucoma as an “illness for which marijuana provides relief.” (Health & Safety Code §
5 11362.5, subd.(b)(1)(A).) Without anything more, the DMV suspended Vaughn’s license
6 indefinitely, contending that Vaughn’s private use of marijuana to treat glaucoma rendered him
7 “incapable of safely operating a motor vehicle because of . . . [an] addiction to, or habitual use
8 of, [a] drug.” (See Vehicle Code § 12806, subd. (a).) The voters of California have declared the
9 right of qualified individuals, like Vaughn, to use marijuana to treat illnesses, including
10 glaucoma. Regardless whether the CHP or DMV agree with this policy, they may not use their
11 authority under California law to subvert the will of the electorate. The issuance of a writ of
12 mandamus is needed to restore the will of the California electorate and the right to drive for
13 medical marijuana patients generally.
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17 **PETITION**

18 TO THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA IN AND FOR THE
19 COUNTY OF EL DORADO:

20 Petitioner Matthew Vaughn (“Vaughn”) respectfully petitions this Court for a writ of
21 mandamus directed to the Director of the Department of Motor Vehicles (“DMV”), State of
22 California, and alleges by this verified petition as follows:

23 1. On June 5, 2005, at 7:25 a.m., Mr. Vaughn was pulled over by Officer D.
24 Henriques of the California Highway Patrol (“CHP”) for speeding. Although Mr. Vaughn was
25 not under the influence of marijuana at the time and he was not cited for this, he told the CHP
26 Officer that he was a qualified medical marijuana patient and showed him a copy of his
27 physician’s recommendation to use marijuana to treat glaucoma. The Officer did not arrest or
28

1 cite Vaughn for being under the influence of marijuana; instead, he went back to the station to
2 research the use of marijuana to treat glaucoma.

3
4 2. As a result of his internet research, CHP Officer Henriques found some
5 information from the Americans Academy of Ophthalmology, which states as follows: “Based
6 on a lack of scientific evidence, the American Academy of Ophthalmology does not endorse the
7 use of marijuana to treat glaucoma. The Academy believes there is no evidence to date that
8 shows that marijuana is safer or more effective than drugs currently available to [treat
9 glaucoma].” Because of this, Officer Henriques appended a printout of this internet article to his
10 police report and referred Mr. Vaughn to the DMV for a reexamination of his driver’s license.
11

12 3. Thereafter, on July 7, 2005, the DMV notified Mr. Vaughn that it was going to
13 reexamine his license and, on August 22, 2005, it issued an order of suspension, effective August
14 26, 2005. Vaughn, then, requested a hearing to determine whether his driver’s license should be
15 suspended under the authority of Vehicle Code Section 12806.
16

17 4. Whereas no evidence was presented at the DMV hearings indicating that
18 Vaughn’s medical marijuana use impaired his ability to drive in any way, Vaughn submitted a
19 letter from his physician stating his medical condition and use of medicines to treat it did not
20 impair his ability to drive in any way. Vaughn also attempted to introduce scientific and medical
21 articles and studies demonstrating that private marijuana use does not impair one’s ability to
22 operate a motor vehicle. The DMV hearing officer, however, inappropriately excluded nearly all
23 of the evidence submitted by Vaughn.¹
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28 ¹ Mr. Vaughn has requested a copy of the administrative record, but he is yet to receive it. For
this reason, it is entirely clear at this time precisely which exhibits were admitted and excluded
by the hearing officer.

1 5. Notwithstanding the lack of any evidence demonstrating that Vaughn’s medical
2 marijuana use rendered him incapable of operating a motor vehicle safely, the DMV concluded
3 that his at-home use of marijuana to treat his glaucoma rendered him “incapable of safely
4 operating a motor vehicle because of . . . [an] addiction to, or habitual use of, [a] drug,” pursuant
5 to Vehicle Code Section 12806, Subdivision (a). By letter dated October 27, 2005, the DMV
6 indefinitely suspended Mr. Vaughn’s driver license until such time as he submits a drug test
7 demonstrating that he is no longer using marijuana to treat his glaucoma.
8

9 6. If Mr. Vaughn stops using marijuana, he will suffer extreme pain and he will run
10 the risk of becoming permanently blind.
11

12 7. The DMV’s suspension of Vaughn’s driver’s license based solely on his status as
13 a qualified medical marijuana patient under California law constitutes an abuse of discretion
14 because it is, among the other reasons stated in this Petition: contrary to the Compassionate Use
15 Act (Health & Safety Code § 11362.5); contrary to his constitutional right to control the course
16 of his medical treatment (*Riese v. St. Mary’s Hospital & Medical Center* (1987) 209 Cal.App.3d
17 1303, 1317-1318; *Bouvia v. Superior Court* (1986) 179 Cal.App.3d 1127, 1137; and is not
18 supported by the evidence.
19

20 8. On January 10, 2006, Vaughn ordered a certified copy of the administrative
21 record and transcript of the administrative hearing and they will be lodged with the Court as soon
22 as he receives them. Vaughn has received copies of the documentary record, but he has yet to
23 receive the transcript of the DMV hearings.
24

25 9. At all times prior to the suspension or revocation of petitioner’s license, Vaughn
26 was the holder of a valid California driver’s license, license number C1082724, and he is
27
28

1 beneficially interested in this action, as his livelihood depends on his having a valid driver's
2 license.

3 10. Vaughn is appealing from the final decision of the DMV and he has exhausted his
4 administrative remedies.
5

6 11. Vaughn is a resident of the County of El Dorado in the State of California at the
7 time this Petition is filed, so jurisdiction and venue is proper in this Court.

8 12. Vaughn does not have a speedy and adequate remedy at law because there is no
9 appeal from the DMV's order suspending his privilege to operate a motor vehicle. Vaughn's
10 only method of review of that order is by writ of mandate in this Court.
11

12 13. This Petition is timely filed pursuant to Vehicle Code section 23 and Code of
13 Civil Procedure section 1094.5.

14 14. Vaughn's license is not suspended for any reason other than that stated in this
15 petition.
16

17 Wherefore, petitioner prays that:

18 1. An alternative writ of mandate issue under the seal of the Court commanding
19 respondent Director of the DMV to set aside and revoke the DMV's order suspending
20 petitioner's license or to show cause before this Court at a time and place hereafter to be
21 specified by the Court why it has not done so, and why a peremptory writ should not issue.
22

23 2. Pending the hearing and final judgment of the Court in this matter, the DMV be
24 ordered to stay the operation of the order suspending petitioner's license.²
25
26
27

28 ² Vaughn intends to file an *ex parte* application to stay the license suspension in the next several days.

1 3. This Court issue a declaration that suspension or revocation of one's driver's
2 license based solely on his or her status as a qualified medical marijuana patient under California
3 law is:

4 a. contrary to the Compassionate Use Act (Health & Safety Code §
5 11362.5); and is

6 b. contrary to the constitutional right to control the course of one's medical
7 treatment.
8

9 4. Petitioner be granted such other and further relief as may be appropriate and just.
10

11 DATED: January 27, 2006

Respectfully submitted,

12
13 _____
14 JOSEPH D. ELFORD
15 Counsel for Petitioner
16 MATTHEW VAUGHN
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1 **VERIFICATION**

2 I am the Petitioner in this action. All facts alleged in the above Petition, not otherwise
3 supported by citations to the record, exhibits or other documents, are true of my own personal
4 knowledge, unless otherwise so stated.
5

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

8 Executed this ___ day of January in _____, California.
9

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11 _____
12 MATTHEW VAUGHN
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6 MATTHEW VAUGHN,)
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v.)
DIRECTOR, DEPARTMENT OF MOTOR)
VEHICLES,)
Respondent,)
_____)

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 I.

16 THE DMV ABUSED ITS DISCRETION AND WAS WITHOUT JURISDICTION TO
17 SUSPEND VAUGHN’S DRIVER’S LICENSE BASED SOLELY UPON HIS STATUS AS
18 A QUALIFIED MEDICAL MARIJUANA PATIENT

19 A. Legal Standards

20 Pursuant to its authority under the Vehicle Code, the DMV may suspend or revoke the
21 driver’s license of a person rendered incapable of safely operating a motor vehicle because of an
22 addiction to, or habitual use of, a drug. (See Vehicle Code § 12806, subd. (a) & 13803, subd.(f).)
23 As in all administrative proceedings to suspend or revoke a license, the burden of proving the
24 facts necessary to support the action rests with the DMV. (*Daniels v. Department of Motor*
25 *Vehicles* (1983) 33 Cal.3d 532, 536; *Coniglio v. Department of Motor Vehicles* (1996) 39
26 Cal.App.4th 666, 682.) It must come forward with “substantial competent evidence” of facts
27 supporting a suspension before the licensee has any obligation to rebut the allegations or
28

1 otherwise respond. (*Daniels, supra*, 33 Cal.3d at pp.536-537; see *Coniglio, supra*, 39
2 Cal.App.4th at p.682.)

3 If the DMV elects to suspend or a driver’s license after conducting a hearing, the driver
4 may petition the superior court in the county in which he resides for a writ of mandate. (Code of
5 Civil Procedure § 1094.5, subd. (c).) In ruling on such petition, this Court must exercise its
6 independent judgment to determine whether the law and the weight of the evidence supports the
7 administrative officer’s decision because a driver’s license is a protectible property interest. (See
8 *Lake v. Reed* (1997) 16 Cal.4th 448, 456; *Morgenstern v. Department of Motor Vehicles* (2003)
9 111 Cal.App.4th 366, 372; *Coniglio, supra*, 39 Cal.App.4th at 682 [citation omitted]; see also
10 *Daniels, supra*, 33 Cal.3d at p.536 [“It is well recognized that the private interest at stake in this
11 case--the right to retain a driver’s license absent competent proof of a violation of the law--is a
12 substantial one.]

13
14
15 **B. The DMV Abused Its Discretion in Suspending Vaughn’s License Based on His**
16 **Status as a Qualified Medical Marijuana Patient**

17 Despite the fact that Vaughn is an experienced driver with no accidents and no moving
18 violations (prior to the speeding violation at issue here) in his more than thirty-five years of
19 driving, the DMV revoked his driver’s license because it found that his use of marijuana to treat
20 glaucoma rendered him “incapable of safely operating a motor vehicle because of . . . [an]
21 addiction to, or habitual use of, [a] drug.” (See Vehicle Code § 12806, subd. (a).) The only
22 evidence introduced by the DMV to support this conclusion is the police report filed by the CHP
23 Officer, which states that Vaughn is a qualified medical marijuana patient and, based on his
24 internet research, the use of marijuana to treat glaucoma is not medically necessary. It was an
25 abuse of discretion to suspend Vaughn’s license on this basis.
26
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1 1. *The DMV Has Not Proceeded in the Manner Prescribed by Law*

2 Approved by fifty-seven percent of the California electorate, the Compassionate Use Act
3 declares as its purpose: “[E]nsur[ing] that seriously ill Californians have the right to obtain and
4 use marijuana for medical purposes where that medical use is deemed appropriate and has been
5 recommended by a physician who has determined that the person’s health would benefit from the
6 use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, *glaucoma*,
7 arthritis, migraine, or any other illness for which marijuana provides relief.” (Health & Safety
8 Code § 11362.5(b)(1)(A) [emphasis added].) Despite this clear and unequivocal statement of
9 Vaughn’s right to use marijuana to treat glaucoma where, as here, his doctor has recommended
10 this, the CHP Officer requested that the DMV reexamine Vaughn’s license based on an internet
11 website stating that, “[b]ased on a lack of scientific evidence, the Americans Academy of
12 Ophthalmology does not endorse the use of marijuana to treat glaucoma.” As a general matter,
13 the Compassionate Use Act places the determination of the appropriate course of medical
14 treatment with physicians, not the courts or law enforcement, and neither the CHP Officer nor
15 the DMV was free to second-guess the medical judgment of Vaughn’s physician. (*People v.*
16 *Spark* (2004) 121 Cal.App.4th 259, 16 Cal.Rptr.3d 840, 846-47 [“Whether the medical use of
17 marijuana is appropriate for a patient’s illness is a determination to be made by a physician. A
18 physician’s determination on this medical issue is not to be second-guessed by jurors who might
19 not deem the patient’s condition to be sufficiently ‘serious.’”]; *People v. Wright* (2004) 121
20 Cal.App.4th 1356, 18 Cal.Rptr.3d 220, 227 [same].) More particularly here, the Compassionate
21 Use Act expressly provides for the use of marijuana to treat glaucoma (Health & Safety Code §
22 11362.5(b)(1)(A)), and it was error for the CHP Officer to put the opinion of the American
23 Academy of Ophthalmology ahead of the will of the California electorate. The DMV erred as a
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1 matter of law in ignoring the Compassionate Use Act and suspending Vaughn’s driver’s license
2 based solely on his exercise of a right promised him by the California voters.³

3
4 2. *The DMV Failed to Meet Its Burden of Presenting Substantial Competent
5 Evidence of Vaughn’s Inability to Safely Operate a Motor Vehicle*

6 Relying as it did solely on Vaughn’s status as a qualified medical marijuana patient to
7 suspend Vaughn’s driver’s license, the DMV failed to meet its burden of coming forward with
8 substantial competent evidence that he suffered from an addiction to, or habitual use of, drugs
9 that rendered him incapable of safely operating a motor vehicle. (See Vehicle Code § 12806,
10 subd. (a).) Conspicuously absent from the record is *any* evidence that Vaughn, in fact, is an unfit
11 driver. He has never been cited or arrested for driving under the influence. He has not been
12 involved in any accidents caused by him. He had no moving violations, prior to this one. He did
13 not fail a driving test. Vaughn, on the other hand, introduced evidence from two physicians
14 stating that his medical treatment did not render him unfit to drive.
15

16 In general, the statutory provisions authorizing a license reexamination, Vehicle Code
17 sections 13800 and 13801, do so only for serious driving offenses, such as accidents causing
18 death or serious injury to persons or property, serial accidents or drunk driving offenses, and
19 fraudulent use of a driver’s license. (See Vehicle Code §§ 13800, subd. (a), (b) & (e)) The
20 evidence here is a far cry from that needed to support a license suspension. (See *Daniels v.*
21 *Department of Motor Vehicles* (1983) 33 Cal.3d 532, 538 [holding that accident report, standing
22 alone, was insufficient basis for suspension of driver’s license under Financial Responsibility
23 Law]; *Santos v. Department of Motor Vehicles* (1992) 5 Cal.App.4th 542, 549 [holding that,
24
25

26
27 ³ For these same reasons, the DMV violated Vaughn’s constitutional right to determine the
28 course of his own medical treatment, absent evidence that his medical marijuana impairs the
safety of others. (Cf. *Riese v. St. Mary’s Hospital & Medical Center* (1987) 209 Cal.App.3d

1 absent evidence of when driver's blood was drawn, blood test revealing blood alcohol level
2 higher than 0.008 percent was insufficient to carry DMV's burden of proof]; cf. *Beamon v.*
3 *Department of Motor Vehicles* (1960) 180 Cal.App.2d 200, 203-204 & fn.1 [affirming revocation
4 of driver's license where driver had five accidents and twenty-two citations in a period of five
5 years]; see also *Kriesel v. McCarthy* (1963) 214 Cal.App.2d 69, 72 ["Section 12810 of the
6 Vehicle Code does not confer the basic authority upon the Department of Motor Vehicles to
7 suspend or revoke an operator's license."]; *Beamon, supra*, 180 Cal.App.2d at 207 ["The
8 authority to initiate an investigation or require reexamination of the licensee is not the authority
9 to state what acts violate the law"]; see also *Brewer v. Department of Motor Vehicles* (1979) 93
10 Cal.App.3d 353 [holding that it was error for DMV to revoke license to sell motor vehicles
11 because applicant's conviction for crime of moral turpitude was not shown to relate to his fitness
12 to sell motor vehicles].) The DMV erred in suspending Vaughn's license.

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16 3. *The DMV Erred in Excluding Relevant and Admissible Evidence*

17 Because the DMV has yet to prepare the transcript of the administrative proceedings, it is
18 too early to tell precisely what evidence was admitted and what was excluded. Vaughn
19 attempted to introduce voluminous evidence demonstrating that his medical marijuana use did
20 not impair his ability to drive and understands that the DMV hearing officer excluded much of
21 this evidence. This constitutes an independent grounds for error.⁴
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26 1303, 1317-1318 [noting constitutional right to determine the course of one's medical treatment];
27 *Bouvia v. Superior Court* (1986) 179 Cal.App.3d 1127, 1137 [same].)

28 ⁴ Vaughn reserves the right to assert additional grounds of error after the administrative record is prepared and certified. This includes, but is not limited to, Vaughn's claim that the DMV abused its discretion in departing from its own policies and practices in failing to give him a driving test.

1 **C. The DMV Failed to Exercise Its Discretion**

2 Indeed, it appears from the record that the DMV abdicated its independent
3 decisionmaking to the CHP Officers. Such failure to exercise discretion under the Vehicle Code
4 constitutes an abuse of discretion. (See *Grimes v. State Department of Social Services* (1999) 70
5 Cal.App.4th 1065, 1073 [noting that courts have found abuse of discretion where administrative
6 agencies fail to exercise their discretion] [collecting citations].)

7
8 **D. The Administrative Proceedings Violate Due Process**

9 Conducted in this manner, the administrative proceedings violate Vaughn’s right to due
10 process for three reasons. *First*, Vaughn was not give fair notice of the allegations against him --
11 the initial notice of his license suspension does not set forth the reasons that the DMV was
12 proceeding against Vaughn.

13
14 *Second*, the DMV essentially shifted the burden of proof to Vaughn to demonstrate his
15 innocence. It required him to submit documentation from his physicians establishing his ability
16 to operate a motor vehicle safely. By shifting the burden of proof in this fashion, the DMV
17 violated Vaughn’s right to due process.

18
19 *Third*, the DMV did not exercise its discretion and essentially yielded this discretion to
20 the CHP Officer who conducted the internet search. This violated Vaughn’s right to a hearing by
21 a fair and impartial adjudicator.

22
23 **E. The DMV Was Without Jurisdiction to Suspend Vaughn’s Driver’s License**

24 The DMV also lacked the discretion even to conduct the reexamination. This case came
25 to the DMV as a result of a request from a law enforcement officer to reexamine Vaughn’s
26 license. Pursuant to Vehicle Code section 13800, the DMV may conduct an investigation to
27 determine whether to suspend or revoke a driver’s license upon receiving a report from a
28

1 member of the driver’s family or a law enforcement officer that the person is an unsafe driver.
2 (See Vehicle Code § 13803, subd. (b).) This report must “state that the person filing the report
3 reasonably and in good faith believes that the operator cannot safely operate a motor vehicle.”
4 (Vehicle Code § 13803, subd. (b).) In addition, the report must be “based upon personal
5 observation or physical evidence of a physical or medical condition that has the potential to
6 impair the ability to drive safely, or upon personal knowledge of a driving record that, based on
7 traffic citations or other evidence, indicates an unsafe driver.” (Vehicle Code § 13803, subd.
8 (b).) Such evidentiary foundation must be stated in the report “or the report shall be based upon
9 an investigation by a law enforcement officer.” (Vehicle Code § 13803, subd. (b).)
10
11

12 Here, it does not appear that the report triggering the reexamination process with the
13 DMV contained the statutory requisites. The CHP Officer’s report did not state that he had a
14 good faith basis to believe that Vaughn could not safely operate a motor vehicle, nor did his
15 investigation reveal any facts to establish that Vaughn has a medical condition that would impair
16 his ability to drive. Lacking this, the DMV was without the jurisdiction to reexamine Vaughn’s
17 license.⁵
18

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28 ⁵ Alternatively, this claim can be viewed as a failure of the DMV to proceed in a manner prescribed by law, pursuant to Code of Civil Procedure section 1094.5(b).

1 **CONCLUSION**

2 For the foregoing reasons, this Court should issue an alternative writ of mandate issue
3 commanding respondent Director of the DMV to set aside and revoke the DMV's order
4 suspending petitioner's license or to show cause before this Court at a time and place hereafter to
5 be specified by the Court why it has not done so.
6

7 DATED: January 27, 2006

Respectfully submitted,

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10 _____
11 JOSEPH D. ELFORD
12 Counsel for Petitioner
13 MATTHEW VAUGHN
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1 **CERTIFICATE OF WORD COUNT**

2 I, MATTHEW VAUGHN, declare as follows:

3 On January 26, 2006, I performed a word count of the above-enclosed brief, which
4 revealed a total of 3,817 words.
5

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed this 26th day of January in San Francisco, California.
8
9

10 _____
11 MATTHEW VAUGHN
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1 **DECLARATION OF SERVICE**

2
3 I am a resident of the State of California and over the age of eighteen years. My business
4 address is:

5 On January 27, 2006, I served the within document(s):

6 **PETITION FOR ALTERNATIVE WRIT OF MANDAMUS; REQUEST FOR STAY;**
7 **MEMORANDUM OF POINTS AND AUTHORTIES (NON-DUI)**

8 Via first-class mail to:

9 DMV Legal Office
10 2415 First Avenue
11 Sacramento, CA 95818

12 I declare under penalty of perjury under the laws of the State of California that the above is true
13 and correct.

14 Executed on this __ day of January, 2006, in _____, California.

15
16 _____