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FILED

JUN 12 2015

SAN LUIS OBISPO SUPERIOR COU
BY: Allen Cruthirds
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5 Attorney for the People of the State of California

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO

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11 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO. F-458519
12) Plaintiff,) D.A. NO. 11-2058
13 vs.) EX PARTE APPLICATION FOR AN
14 RODNEY VIRGIL JARMIN) ORDER SHORTENING TIME TO HEAR
15 and) PEOPLE'S MOTION TO
16 TAMMY MARIAN JORDAN) RECONSIDER, TO REINSTATE
17 aka TAMMY BREWER,) FELONY INFORMATION, TO SET
18 Defendants.) ASIDE COURT'S REDUCTION OF
19) CHARGES TO MISDEMEANORS
Pursuant to Penal Code
Section 17(B) and Striking of
Enhancements, and to Allow
Defendants to Withdraw Plea

20 TO THE DEFENDANTS AND THEIR ATTORNEY OF RECORD:

21 PLEASE TAKE NOTICE that at 8:30 a.m. on June 17, 2015, in Department 9 of
22 the above entitled court, located at 1050 Monterey Street in San Luis Obispo, California,
23 the People will move *ex parte* for an order shortening time to hear the People's motion
24 to reinstate felony information, set aside court's reduction of charges to misdemeanors

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26 Page 1

27 EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR
28 PEOPLE'S MOTION TO RECONSIDER, TO REINSTATE FELONY INFORMATION,
TO SET ASIDE COURT'S REDUCTION OF CHARGES TO MISDEMEANORS
PURSUANT TO PENAL CODE SECTION 17(B) AND STRIKING OF
ENHANCEMENTS, AND TO ALLOW DEFENDANTS TO WITHDRAW PLEA

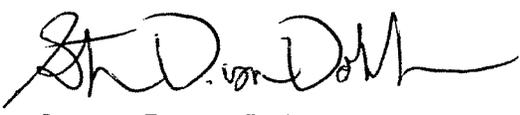
1 and its striking of the enhancements, and allow defendant to withdraw plea. That
2 request is made pursuant to the following points:

- 3 1. This court exceeded its authority to reduce the applicable charges from
4 felonies to misdemeanors under Penal Code section 17(b), engaged in
5 prohibited judicial plea bargaining, and violated the rights of victim's in this
6 case under Article 1 Section 28 of the California Constitution.
- 7 2. For the foregoing reasons, the People respectfully request an order
8 shortening time to hear the subject motion.
- 9 3. This Application is based upon California Rules of Court 3.1200 et. seq.
10 These provisions authorize this court to shorten time within which motions are
11 to be filed and heard.

12 The foregoing applications are based upon the memorandum of points and
13 authorities and the declaration set forth below, and the accompanying declaration of
14 notice.

15 Dated: June 12, 2015

16 Respectfully submitted,
17 Dan Dow
18 District Attorney



19 By: Steven D. von Dohlen
20 Deputy District Attorney

27 EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR
28 PEOPLE'S MOTION TO RECONSIDER, TO REINSTATE FELONY INFORMATION,
TO SET ASIDE COURT'S REDUCTION OF CHARGES TO MISDEMEANORS
PURSUANT TO PENAL CODE SECTION 17(B) AND STRIKING OF
ENHANCEMENTS, AND TO ALLOW DEFENDANTS TO WITHDRAW PLEA

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE**
2 **APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO**
3 **REVOKE OR MODIFY AN ORDER AND, SEPERATELY, AN APPLICATION FOR**
4 **ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**

5 I.

6 **FACTUAL AND PROCEDURAL HISTORY**

7 On June 10, 2015, the defendants in this matter entered pleas pursuant to
8 People v. West. Prior to taking the defendant's pleas, this court reduced the felony
9 charges to misdemeanors, struck all of the enhancements, and set a fixed amount of
10 restitution. The court exceeded its jurisdiction in doing so. First, the court was
11 prohibited from reducing the felonies to misdemeanors under the specific terms of Penal
12 Code section 17(b). Second, the court engaged in judicial plea bargaining by fixing the
13 amount of restitution and striking the applicable enhancements. Finally, the victims in
14 this case have had not been notified or given an opportunity to be heard on these topics
15 prior to of the court's actions and, as such, their rights were violated pursuant to Article
16 1, section 28 of the California Constitution.

17 The People now seek an order from this court setting aside its earlier order
18 reducing the alleged felonies to misdemeanors, and a companion order allowing the
19 defendants to withdraw their pleas so that this matter can proceed to trial.

20 II.

21 **THIS COURT IS AUTHORIZED TO SHORTEN TIME FOR NOTICE AND HEARING**
22 **ON THE PROPOSED MOTION FOR REVOCATION OR MODIFICATION**

23 California Rule of Court 3.1300(b) states that the "court, on its own motion or on
24 application for an order shortening time supported by a declaration showing good
25

1 cause, may prescribe shorter times for the filing and service of papers” than the ordinary
2 timeframes permit.

3 As stated in the declaration of Steven von Dohlen, good cause exists to shorten
4 time for the hearing of the People’s motion. This court improperly reduced the felony
5 charges in this case to misdemeanors in violation of Penal Code section 17(b). This,
6 along with striking the alleged enhancements and fixing the amount of restitution, has
7 impaired the victims’ substantial rights under Marsy’s Law and impaired a just resolution
8 of this case. Through its action, the court has exceeded its jurisdiction, and therefore
9 must promptly review and correct any errors in doing so.

10 An Order Shortening Time is necessary in this case because this matter was set
11 for trial and should be so again. The parties are now in an unpredictable position and
12 the victims, in particular, have a right to finality in their case. Furthermore, the People
13 have alleged via their motion that this court misapplied the law and took an illegal plea.
14 Such an error should be resolved as quickly as possible.

15 **III.**

16 **COUNSEL FOR THE PEOPLE HAS COMPLIED WITH CALIFORNIA RULES OF**
17 **COURT IN TERMS OF PROVIDING NOTICE OF THIS EX PARTE APPLICATION**
18 **AND FOR THE ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING**
19 **ORDER**

20 In this case, counsel for the People notified the defendants’ attorneys that the ex
21 parte application would proceed at 8:30 a.m. on June 17, 2015 in Department 9 of the
22 San Luis Obispo County Superior Court, by serving a copy of this ex parte application at
23 his their law offices via fax. Delivery was accomplished before 4:00 p.m. on June 12,
24 2015. Likewise, Counsel for the People emailed and called the defendants’ attorneys to
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1 advise them of the time and date for the hearing on these applications at approximately
2 4:00 p.m. on June 12, 2015.

3 IV.

4 CONCLUSION

5 The People respectfully request that this court grant this ex parte application and
6 shorten time to hear the People's motion.

7 Dated: June 12, 2015

8 Respectfully submitted,

9 Dan Dow
10 District Attorney

11 

12 By: Steven von Dohlen
13 Deputy District Attorney

1 defendants and the court is therefore improper. Finally, this court misapplied the law
2 and such an error should be repaired as quickly as possible.

3 4. I am informed and believe that our office notified the defense attorneys in
4 this case that this Ex Parte Application would be presented to the court on June 17,
5 2015 at 8:30 a.m. in Department 9 of the above entitled court.

6 5. Exhibit 1 is a true and correct copy of the People's motion to reconsider, to
7 reinstate the felony information, to set aside the court's reduction of charges to
8 misdemeanors and striking of the enhancements, and to allow the defendants to
9 withdraw their pleas.

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

12 Executed this 12th day of June, 2015, at San Luis Obispo, California.

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16 Steven D. von Dohlen

17 Deputy District Attorney
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5 Attorney for the People of the State of California

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TAMMY MARIAN JORDAN) CHARGES TO MISDEMEANORS
16) PURSUANT TO PENAL CODE
aka TAMMY BREWER,) SECTION 17(B) AND STRIKING OF
17 Defendants.) ENHANCEMENTS
18)

19 COMES NOW THE PLAINTIFF, the People of the State of California, by and
20 through their attorneys, Dan Dow, District Attorney, and Steven D. von Dohlen, Deputy
21 District Attorney, and respectfully submits the following Motion to Reconsider, to Reinstate
22 the Felony Information, and to Set Aside the Court's Reduction of Charges to
23 Misdemeanors per Penal Code section 17(b) and Striking of Enhancements.

24 **STATEMENT OF THE CASE**

25 On March 29, 2011, defendants Rod Jarmin and Tammy Jordan were charged by
26 way of criminal complaint with seven felony counts of violating California Corporations

28 PEOPLE'S MOTION TO RECONSIDER, TO REINSTATE FELONY INFORMATION, TO
SET ASIDE COURT'S REDUCTION OF CHARGES TO MISDEMEANORS PURSUANT
TO PENAL CODE SECTION 17(B) AND STRIKING OF ENHANCEMENTS

1 Code section 25401, related to their operation of Real Property Lenders, Inc., located in
2 Paso Robles, CA. The criminal complaint also included several enhancements related to
3 excessive takings, including Penal Code section 186.11(a)(2) (the "Aggravated White
4 Collar Crime Enhancement," for loss exceeding \$500,000.00), Penal Code section
5 12022.6(a)(3) (for loss exceeding \$1.3 million), and Penal Code section 1203.045 (denial
6 of probation for takings exceeding \$100,000.00).

7 On June 2, 2011, the defendants were arraigned on the criminal information filed in
8 the case, following a five-day preliminary hearing where they were held to answer as
9 charged. The criminal information contained the same charges and enhancements as the
10 criminal complaint.

11 On May 22, 2014, at the request of the parties and by order of the court, the
12 Probation Department submitted a report recommending that restitution of over \$8 million
13 be ordered in the case, based on claims from more than 80 victims that were received and
14 processed by the Probation Department.

15 On Wednesday June 10, 2015, during a break in the jury selection process, the
16 defendants pled no contest to the seven charges, following the court's reduction of the
17 charges to misdemeanors. At that time the court also struck the enhancements. It is the
18 People's contention that the court acted in excess of its jurisdiction by reducing the
19 charges to misdemeanors and striking the enhancements at this stage of the proceeding,
20 and this motion seeks to have the court reconsider and set aside its prior action.

21 STATEMENT OF FACTS

22 The defendants were the co-owners of a company called Real Property Lenders,
23 Inc. ("RPL"), based in Paso Robles. Rod Jarmin was the company President and Tammy
24 Jordan was the Vice President. From 2002 through 2008, RPL offered and sold to
25 investors securities which were fractionalized interests in deeds of trust in different
26 properties and construction projects. RPL would then lend the money to borrowers to build

1 houses or otherwise develop the subject property. In addition to acting as the securities
2 broker, RPL also serviced the loans and received compensation for such service.

3 The loans made by investors provided that the investors were to receive monthly
4 interest payments from payments made by the borrowers, and repayment of principal
5 when the secured notes matured, typically in one year. RPL lenders would invest in a
6 particular loan for a particular construction project, and RPL would service the loans to the
7 borrower builders for the particular projects.

8 RPL offered and sold these securities pursuant to permits issued by the California
9 Department of Corporations. When issued, such permits were valid for one year, and
10 were based on RPL's applications for permit. The permit application included copies of
11 RPL's proposed Offering Circular, which was intended to advise potential investors of the
12 aspects and terms of the investment.

13 It is alleged that throughout 2007, during the offer and sale of such securities,
14 defendants Jarmin and Jordan made numerous untrue statements of material fact and
15 omitted to state material facts in their oral and written communications, in violation of CA
16 Corporations Code section 25401. Examples of these alleged violations include, but are
17 not limited to:

18 In November 2006, some of the investors stopped receiving monthly interest
19 payments from some of the projects in which they had invested; however, it is alleged that
20 throughout 2007, prior to accepting new investments from clients, defendants Jarmin and
21 Jordan failed to advise clients or disclose in their Offering Circular or in their Permit
22 Application that RPL had stopped making interest payments to investors on various
23 projects. This includes at least one investor, Mr. Pope, whose \$45,000.00 investment on a
24 particular project was deposited by RPL ten days after a meeting had been held between
25 RPL and that project's borrower builder, during which meeting an agreement was reached
26 that interest payments to investors would be suspended on that project. Neither defendant

1 advised Mr. Pope of the meeting or the suspension of interest payments or even that the
2 particular project was in trouble prior to his investment decision or the depositing of his
3 check by RPL. Mr. Pope only learned of these facts later from another investor on the
4 same project.

5 Also, RPL's 2007 Offering Circular stated: "[s]ince 2000...RPL has had to foreclose
6 on only four loans...and no investor has lost any funds invested with RPL." However,
7 throughout 2007, RPL recorded numerous Notices of Default regarding multiple projects.
8 It is also alleged that Jarmin and Jordan failed to advise clients that they had filed such
9 Notices of Default, nor clarified or corrected the statements in the Offering Circular or the
10 Permit Application regarding RPL's prior or present performance.

11 Additionally, RPL offered and sold securities without permit for over three months in
12 2007, from March 15 through June 24. It is alleged that during the time RPL was
13 unpermitted, Jarmin and Jordan nonetheless brought in over \$2.7 million in new
14 investments from 71 clients, yet never advised any of these clients that RPL was not
15 permitted to offer or sell securities.

16 Over 80 investors have submitted restitution claims to the Probation Department,
17 which has recommended over \$8 million in restitution be ordered in this case.

18 **II.**

19 **THIS COURT'S REDUCTION OF THE APPLICABLE CHARGES FROM FELONIES TO**
20 **MISDEMEANORS WAS IMPROPER**

- 21 **a. After the defendant is held to answer at a preliminary hearing, the court**
22 **cannot reduce a felony to a misdemeanor until a sentence is imposed**
23 **or probation is granted**

24 During the lifecycle of a criminal case, there are only certain points in time when a
25 court is afforded the authority to reduce a felony to a misdemeanor. The court's power in
26 that regard is limited pursuant to the terms of California Penal Code section 17(b). Under

1 that provision, when a certain offense provides for either felony or misdemeanor
2 sentencing, the crime "is a misdemeanor for all purposes under the following
3 circumstances: (1) After a judgment imposing a punishment other than imprisonment in the
4 state prison or imprisonment in a county jail under the provisions of subdivision (h) of
5 Section 1170"; "(3) When the court grants probation to a defendant without imposition of
6 sentence and at the time of granting probation, or on application of the defendant or
7 probation officer thereafter, the court declares the offense to be a misdemeanor"¹; or "(5)
8 When, at or before the preliminary examination or prior to filing an order pursuant to
9 Section 872, the magistrate determines that the offense is a misdemeanor, in which event
10 the case shall proceed as if the defendant had been arraigned on a misdemeanor
11 complaint." (Penal Code sec. 17(b)(1), (3), & (5).) Therefore, if the court finds the People
12 have appropriately charged the defendant with a felony at the preliminary hearing, and the
13 defendant is held to answer for the applicable charge, thereafter only the prosecution may
14 reduce the charge. The prosecutor alone, as a member of the executive branch, is
15 entrusted with "the charging function" and has the sole "prerogative to conduct plea
16 negotiations." (*People v. Clancey* (2013) 56 Cal.4th 562, 574.)

17 Courts interpreting Penal Code section 17(b) have consistently held that
18 magistrates cannot operate outside the confinements of that section. For example, in
19 *People v. Silva*, the trial court "purported to grant a motion to reduce a so-called 'wobbler'
20 offense to a misdemeanor before the adjudication of guilt" but after the preliminary
21 examination, bindover, and filing of an information. (*People v. Silva* (1995) 36 Cal.App.4th
22 231, 233.) The court in *Silva* reversed the order because the trial court had lacked
23 jurisdiction to grant the motion. (*Id.*) The court's holding was that the plain language of
24 section 17(b) deprived the court of such authority." (*Id.* at 235.) After the magistrate had

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26 ¹ It is important to note that a "grant of probation" occurs after a plea and at the time set for sentencing. (Penal Code
27 section 1191, Cal. R. Ct. 4.433(a)(2).) Sentencing has not yet occurred in this case and, as such, the defendant has not
yet been given a "grant of probation."

1 held the defendant to answer and the People had filed an information, "the events had not
2 yet occurred to trigger the superior court's authority to consider reduction to a
3 misdemeanor under section 17(b)(1) or (3)." (*Id.* at 235.)

4 More recently, in *People v. Superior Court (Jalalipour)*, the appellate court held that
5 a reduction of felony charges to misdemeanors was error on facts similar to those at issue
6 here. In *Jalalipour*, the defendant owned 12 Subway restaurants and significantly
7 underreported his collected sales tax from 2004 through 2010. (*People v. Superior Court*
8 (*Jalalipour*) (2015) 232 Cal.App.4th 1199, 1202.) The defendant was held to answer after a
9 preliminary hearing on six counts of tax evasion and one count of grand theft and the
10 People filed an Information on those same counts. (*Id.* at 1202-1203.) "In a subsequent
11 meeting in [the Judge's] chambers, defense counsel asked the court to reduce all of
12 Jalalipour's crimes to misdemeanors pursuant to sections 18 and 17(b)." (*Id.* at 1203.)
13 The People filed an opposition to the defendant's motion, but the court granted it
14 nonetheless. The court reduced the charges and the defendant entered guilty pleas to
15 them as misdemeanors. (*Id.* at 1204.) The reviewing court held that "the establishment of
16 the defendant's guilt, whether by plea or at trial, must *precede* a court's section 17(b)
17 reduction of a wobbler to a misdemeanor. (*Id.* at 1207-1208.) The Court of Appeal also
18 rejected the argument that, since the court could have taken the plea and then reduced the
19 charges at the time of sentencing, the timing of the reduction was a distinction without a
20 difference, noting that some crimes retain collateral consequences despite a section 17(b)
21 reduction. (*Id.* at 1208.)

22 The facts of our case are square with those in *Jalalipour* and *Silva*. Here, like the
23 defendants in *Jalalipour* and *Silva*, the defendants have already been held to answer on a
24 felony complaint. As such, this court is without authority to reduce the felony charges
25 herein without first establishing the defendant's guilt.

1 More specifically, this court *cannot* reduce a felony to a misdemeanor until the
2 imposition of the sentence (Pen. Code sec. 17(b)(1)), or upon granting probation to the
3 defendant without imposing a sentence (Pen. Code sec. 17(b)(3). The court's minutes
4 from June 10, 2015, reflect that this is precisely what occurred. The minutes show that the
5 court reduced the charges to misdemeanors pursuant to Penal Code section 17(b) and
6 that the disposition would be terminal. Therefore, section 17(b)(3) is inapplicable. The
7 minutes also indicate that this court scheduled sentencing in this matter to occur on
8 October 1, 2015, thereby making section 17(b)(1) inapplicable as well. The plea taken on
9 June 10, 2015 was therefore illegal and should be set aside.

10 **b. The People do not waive the right to object to an illegal reduction under**
11 **Penal Code section 17(b) by remaining silent at the time such reduction**
12 **is made**

13 Defense counsel in this case will likely argue that the People did not object to the
14 reduction of the charges and that this is indicative of some type of waiver or forfeiture of
15 the People's right to object. However, the People's silence in this context does not cure
16 the fact that the court's reduction of the charges was still illegal. The court's minutes state
17 that the reduction was pursuant to section 17(b), a statute *only* the court can employ. This
18 is not a scenario wherein the court exercised discretion and the People failed to object to
19 the use of such discretion. The court in this case was *without authority* to reduce the
20 charges to misdemeanors and the People do not waive any right to object to unlawful
21 actions by the court or any other party.

22 It is also important to point out that the defendants have not detrimentally relied on
23 their plea to misdemeanors in this case (the People's request for this court to set aside the
24 reductions under 17(b) was made within 24 hours after the reductions themselves). The
25 cases which estop the prosecution from rescinding a plea are those in which the defendant
26 has suffered some detriment in relying on the agreement. (See *People v. Brunner* (1973)

1 32 Cal.App.3d 908, 915–916; *People v. Barnett* (1980) 113 Cal.App.3d 563, 574.) In our
2 case Defendants cannot claim that the People were estopped from seeking to unwind the
3 plea because they can point to no harm suffered as a result of entering their pleas. Rather,
4 Defendants’ guilty pleas should be withdrawn and they can proceed to trial, which places
5 them in no better or worse position than they were only a few days ago.

6 **III.**

7 **THE COURT IMPROPERLY ENGAGED IN JUDICIAL PLEA BARGAINING**

8 Courts are not allowed to plea bargain criminal cases. A plea bargain is an
9 “agreement negotiated by the People and the defendant and *approved* by the court.”
10 (*People v. Orin* (1975) 13 Cal.3d 937, 942, emphasis added.) A plea bargain occurs when
11 “the defendant agrees to plead guilty in order to obtain a reciprocal benefit.” (*Ibid.*)

12 A court may give an “indicated” sentence, reserving its right to change the sentence
13 based on “a given set of facts” adduced at a later sentencing hearing. (*People v. Superior*
14 *Court (Smith)* (1978) 82 Cal.App.3d 909, 915-916.) “[W]here the defendant pleads guilty
15 to all charges, all that remains is the pronouncement of judgment and sentencing; there is
16 no requirement that the People consent to a guilty plea. In that situation, the trial court
17 may give an ‘indicated sentence’ which falls within the boundaries of the court’s inherent
18 sentencing powers.” (*People v. Vessell* (1995) 36 Cal.App.4th 285, 296, internal citations
19 omitted.)

20 But “a court may not offer any inducement in return for a plea of guilty It may
21 not treat the defendant more leniently because he foregoes his right to trial Leniency
22 in return for a plea of guilty or no contest must be negotiated by the defendant with the
23 prosecutor.” (*People v. Superior Court (Felmann)* (1976) 59 Cal.App.3d 270, 276.) “[T]he
24 court has no authority to substitute itself as the representative of the People in the
25 negotiation process and . . . ‘agree’ to a disposition of the case over prosecutorial
26 objection.” (*People v. Orin, supra*, 13 Cal.3d at p. 943.)

1 California Constitution Article 1, section 28, "[A] victim shall be entitled to the following
2 rights:

3 (6) ...[U]pon request, to be notified of and informed before any pretrial disposition of
4 the case.

5 (8) To be heard, upon request, at any proceeding, ... involving a ... plea,
6 sentencing, ... or any proceeding in which a right of the victim is at issue.

7 (13) To restitution."

8 Here, by the court reducing the charges to misdemeanors and taking the
9 defendants' no contest pleas to the reduced charges, the victims' rights to be notified and
10 to be heard prior to such action were bypassed. Therefore, this court should set aside the
11 reductions and reinstate the enhancements and give the victims the opportunity to be
12 heard regarding possible pleas, sentencing, and restitution.

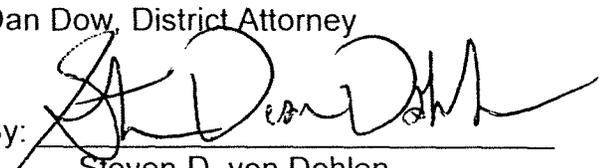
13
14 **CONCLUSION**

15 It is the People's contention that the court acted in excess of its jurisdiction by
16 reducing the charges to misdemeanors and striking the enhancements at this stage of the
17 proceeding. Therefore, the People respectfully request the court to reconsider its prior
18 action, and to reinstate the felony information, and to set aside its reduction of the charges
19 to misdemeanors per Penal Code section 17(b) and striking of the enhancements.

20
21 Dated: June 12, 2015

Respectfully Submitted,

22 Dan Dow, District Attorney

23
24 By: 

25 Steven D. von Dohlen
26 Deputy District Attorney