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FILED

JUL 15 2015

SAN LUIS OBISPO SUPERIOR COURT
BY C. PEREZ
C. Perez, Deputy Clerk

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO

10 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO F-458519
11)
Plaintiff,)
12 vs.) MOTION TO RECONSIDER:
13) PEOPLE'S REPLY TO DEFENDANTS'
14) OPPOSITION
14 RODNEY VIRGIL JARMIN)
AND)
15 TAMMY MARIAN JORDAN) Date: July 22, 2015
16 Aka TAMMY BREWER) Time: 08:30 a.m.
17) Dept. 9
Defendants .)

18 **REGARDING JARMIN'S "STATEMENT OF FACTS" BY COUNSEL**

19 The key facts asserted in Mr. Sanger's Opposition Brief are very much in dispute.
20 (See the attached and incorporated Declaration of Deputy District Attorney Steven D. von
21 Dohlen.) Mr. Sanger, in a rather novel approach, cites his own declaration as authority for
22 his recollection of the facts. Mr. von Dohlen declares, however, that he *never* assented to
23 misdemeanor disposition of the charges or dismissal of the enhancements. Neither did he
24 state that he would not object to the Court's reduction of the charges to misdemeanors and
25 dismissal of the enhancements.

26 What is clear in any event, is that there was never a "meeting of the minds" with
27 respect to the resolution of the case. Without it, under basic contract law, there can never
28 be an enforceable agreement.

1 On the other hand, what was said on the record at the time the pleas were taken on
2 June 10th, 2015, cannot be in dispute. They support the People's position that the Court
3 must reinstate the felony charges and their enhancements, and allow the defendants to
4 withdraw their no contest pleas if they so desire.

6 **REGARDING JORDAN'S DECLARATION BY COUNSEL**

7 The bulk of Mr. Blahnik's declaration is his own irrelevant rendition of the facts of
8 the case. They do not address the issues at hand, but are rather an attempt to try the
9 case without opposition and without a trier of fact.

10 The only relevant portion of Mr. Blahnik's declaration appears on page 4 of his
11 opposition at lines 1 through 8, where he alleges that Mr. von Dohlen expressly indicated
12 he would not object to the Court's reduction of the counts to misdemeanors. As stated
13 above, this "fact" is disputed by Mr. von Dohlen. Thus, the Court should consider only the
14 plain language of the transcript reporting the change of plea on June 10, 2015.

16 **ISSUES**

17 There are only two issues to consider:

- 18 1) Are the People estopped from seeking a reinstatement of the felony charges and
19 their enhancements under *People v Ford* (2015) 61 C4th 282?
- 20 2) If not, did the Court, however well-intentioned, engage in prohibited judicial plea
21 bargaining in taking the defendants' change of pleas?

23 **APPLICATION OF PEOPLE V FORD**

24 The case of *People v Ford* (supra) supports the People's position in this case
25 because, even though easily distinguished on its facts, its analysis supports reinstatement
26 of the felony charges and their enhancements in this case.

27 Mr. Ford was trying to "game the system". He consented to numerous
28 continuances of the restitution hearing until finally a date was set one week after probation

1 was to expire. On that date, he argued 'Ah Hah! You can't make me pay restitution now.'
2 Of course he was estopped. His "laying in the weeds" could not be allowed to deprive his
3 victims of the restitution to which the law entitled them.

4 Those facts are clearly inapposite to the facts of this case. The People are not
5 trying to "game the system". We asked for reinstatement within 24 hours of the change of
6 plea. While, as will be discussed below, the defendants' position will not be adversely
7 affected by reinstatement, the victims in this case will be deprived of their constitutional
8 rights, as well as any opportunity to establish the true amount of restitution to which they
9 are entitled – the exact opposite of the situation in *Ford*.

10 The analysis by the Supreme Court in *Ford* demands reinstatement of the felonies and
11 their enhancements in this case. The Court clearly identifies three considerations to
12 address when considering whether estoppel is appropriate when a party has failed to
13 object to judicial acts in excess of a court's jurisdiction. They are:

- 14 1) Weighing the equities;
- 15 2) The effect of estoppel on the functioning of the courts; and
- 16 3) Public policy.

17 With respect to the "equities" in this case, the rights of crime victims to be heard before
18 pretrial dispositions and sentencings, and rights to a determination of full restitution – rights
19 that are expressly enshrined in the California Constitution – must be weighed against the
20 defendants' "detrimental reliance" on the disposition of the case.

21 In that regard, Jarmin's claim of "detrimental reliance" cites only that Mr. Jarmin is 75 years
22 old, and someone in his family has "health problems". There is no explanation of how the
23 disposition as entered on June 10, 2015, makes him any younger, or his family any
24 healthier. Further, those factors were operative when Mr. Jarmin was willing to engage in
25 a jury trial expected to last several months. Immediate setting of another jury trial date will
26 not harm Mr. Jarmin legally or otherwise.

27 Defendant Jordan, in her Points & Authorities, claims that "defense witnesses have
28 been excused and potentially lost". That begs the questions of, "what witnesses were

1 actually lost (*vis-à-vis* *potentially* lost) during the 24 hours between the change of plea and
2 the People's request for reinstatement of the charges. Further, exactly who are those
3 witnesses? Jordan expresses fear of *possible* detrimental reliance, but there is no *actual*
4 detrimental reliance.

5 Jordan further suggests that "potential new jurors have been poisoned by a great
6 deal of misleading and negative media coverage". Media coverage, indeed "negative"
7 media coverage is common to high-profile cases. Whether future jurors can approach
8 their task impartially can be explored through the voir dire process.

9 Therefore, neither defendant Jarmin, nor defendant Jordan, can show how the
10 equities can be balanced in favor of denial of the People's request for reinstatement of the
11 charges and enhancements.

12 Next, granting the People's request will have no adverse effect on the functioning of
13 the courts. In fact, it will restore confidence in the integrity of the court system.

14 Third, the public policy consideration guiding the court's analysis in *Ford* was the
15 victims' right to restitution. That same policy consideration demands that the felony
16 charges be reinstated in this case.

17 The probation heard from more than 80 victims regarding restitution. The probation
18 officer did what was asked in estimating the restitution at over \$8 million dollars. A key
19 "public policy" is that the punishment fit the crime. Whether the actual restitution is \$8
20 million dollars, or \$100,000, under what analysis can that degree of harm be considered a
21 misdemeanor?

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23

24

CONCLUSION

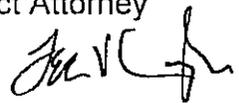
25 Having established that the People are not estopped from seeking relief under the
26 *Ford* decision, and that the *Ford* analysis supports reinstatement of the charges and
27 enhancements, the only remaining issue is whether the Court exceeded its jurisdiction in
28 taking the change of pleas on June 10th, 2015.

1 For all of the foregoing reasons, this Court should set aside its order reducing the
2 charges to misdemeanors and dismissing the enhancements. If the defendants so desire,
3 they should be allowed to withdraw their no contest pleas, and the matter should be reset
4 for jury trial at the earliest possible date.

5
6 Date: July 15, 2015

7 Respectfully submitted,

8 Dan Dow
9 District Attorney



10 By: Lee V. Cunningham
11 Assistant District Attorney

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7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF SAN LUIS OBISPO

10 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO. F-458519
11) Plaintiff,) D.A. NO. 11-2058
12 vs.)
13 RODNEY VIRGIL JARMIN) DECLARATION OF DEPUTY
14 and) DISTRICT ATTORNEY
15 TAMMY MARIAN JORDAN) STEVEN D. von DOHLEN
16 aka TAMMY BREWER,) Date: July 22, 2015
17 Defendants.) Time: 8:30am
Dept. 9

18 I, Steven D. von Dohlen, do hereby declare and state:
19 (1) I am the Deputy District Attorney assigned to the prosecution of this case.
20 (2) On March 29, 2011, defendants Rod Jarmin and Tammy Jordan were charged
21 by way of criminal complaint with seven felony counts of violating California
22 Corporations Code section 25401, related to their operation of Real Property
23 Lenders, Inc., located in Paso Robles, CA. The criminal complaint also included
24 several enhancements related to excessive takings, including Penal Code
25 section 186.11(a)(2) (the "Aggravated White Collar Crime Enhancement," for
26 loss exceeding \$500,000.00), Penal Code section 12022.6(a)(3) (for loss
27 exceeding \$1.3 million), and Penal Code section 1203.045 (denial of probation
28 for takings exceeding \$100,000.00).

- 1 (3) On June 2, 2011, the defendants were arraigned on the criminal information filed
2 in the case, following a five-day preliminary hearing before the Honorable Judge
3 Michael Duffy, where the defendants were held to answer as charged. The
4 criminal information contained the same charges and enhancements as the
5 criminal complaint.
- 6 (4) From 2011 to 2014, the case proceeded toward trial, with settlement discussions
7 along the way.
- 8 (5) In early 2014, Judge Duffy gave an indicated sentence that he would possibly
9 reduce the charges to misdemeanors at the time of sentencing, but that the
10 defendants would still be responsible for full restitution, which the People
11 estimated to be \$5-10 million or more. The People did not agree that
12 misdemeanor dispositions were acceptable, but acknowledged that the Court
13 would have the authority to reduce the charges at sentencing if the Court chose
14 to do so.
- 15 (6) On April 14, 2014, at the request of the parties and by order of the Court, the
16 Probation Department completed a pre-plea restitution report and
17 recommendation. On May 22, 2014, the Probation Department submitted its
18 report recommending that restitution of almost \$8.2 million be ordered in the
19 case, based on claims from more than 80 victims that were received, processed
20 and reviewed by the Probation Department. Following the Probation Report and
21 Recommendation, the case was set for trial.
- 22 (7) On June 4, 2015, at the final readiness conference, the jury trial was assigned to
23 the Honorable Judge Donald Umhofer.
- 24 (8) On June 8 and 9, 2015, the Court and counsel started the process of screening
25 potential jurors' hardship exemption requests. During chambers conferences
26 these two days, the parties acknowledged that Judge Duffy had previously given
27 an indicated sentence of misdemeanor dispositions in the case, with full
28 restitution. Once again, the People did not agree that misdemeanor dispositions

1 were acceptable, but acknowledged that the Court would have the authority to
2 reduce the charges at sentencing if the Court chose to do so. (*Contra*,
3 Defendant Jarmin's *Opposition to Motion to Reconsider*, Page 1, line 26 – page
4 2, line 3; *contra*, *Sanger Declaration*, Page 2, lines 12-14.)

5 (9) Between June 4 and June 8, Judge Umhofer thoroughly reviewed the
6 Preliminary Hearing transcript, and on June 8 and 9 raised several concerns for
7 each party's case, and stated that he, too, would be inclined to follow Judge
8 Duffy's indicated sentence of reducing the charges to misdemeanors and
9 ordering restitution.

10 (10) On the morning of June 10, 2015, Mr. Sanger and I discussed the further
11 possibility of resolving the case, in light of Judge Umhofer's indicated sentence
12 and comments about the case. This initial discussion focused on restitution,
13 which had been the previous impediment, and was based on defendant Jarmin's
14 offer of an up-front payment of \$100,000.00 toward restitution, with the full
15 amount of restitution yet to be determined. (*Contra*, *Jarmin Opposition*, Page 3,
16 lines 10-12 and lines 19-21; *contra*, *Sanger Declaration*, Page 3, lines 22-24 and
17 page 4, lines 5-7.)

18 (11) I never said that I "did not want to take responsibility for reducing the case to
19 a misdemeanor but had no objection if the judge did it." (*Contra*, *Jarmin*
20 *Opposition*, Page 3, lines 22-23; *contra*, *Sanger Declaration*, Page 4, lines 7-9).

21 (12) Later that morning, during in chambers discussions with the Court and all
22 counsel, the defense offered payments of \$100,000.00 from defendant Jarmin
23 and \$10,000.00 from defendant Jordan for initial payment amounts, not for
24 restitution in total. (*Contra*, *Jarmin Opposition*, Page 3, lines 23-27; *contra*,
25 *Sanger Declaration*, 9-15.) I did acknowledge that it might be difficult to collect
26 more than those amounts from the defendants or the \$8 million recommended
27 by the Probation Department, but reiterated that the proper procedure was to
28 determine full amounts via restitution hearing with victims.

1 (13) During this same meeting in chambers, Judge Umhofer discussed at length
2 with all counsel at that time how the initial \$110,000.00 might be distributed
3 among the victims, on a pro rata share and taking into consideration other
4 restitution determination issues, including the manner in which the eventual
5 restitution hearing would be conducted. During this discussion, Judge Umhofer
6 merely acknowledged that the defense position was that part of the losses was
7 due to the crash in the housing market and additional actions of some third
8 parties. (*Contra, Jarmin Opposition*, Page 4, lines 4-6; *contra, Sanger*
9 *Declaration*, Page 4, lines 18-21.) The defense did not present anything other
10 than argument (*Contra, Blahnik Declaration*, Page 2, line 1 – page 3, line 24),
11 and Judge Umhofer did not make any ruling or finding based on these claims by
12 defense counsel.

13 (14) Judge Umhofer indicated to all counsel at that time that \$110,000.00 would
14 be a fair starting amount, based on the information he had at that point (*Contra,*
15 *Jarmin Opposition*, Page 4, lines 6-7, and lines 15-16; *contra, Sanger*
16 *Declaration*, Page 4, lines 21-22, and page 5, lines 2-4). Judge Umhofer also
17 acknowledged that cases with large amounts of restitution often do not get
18 satisfied, and that defendants cannot be jailed unless there is shown an ability
19 and willful failure to pay.

20 (15) During our morning discussion on June 10, 2015, I acknowledged to Mr.
21 Sanger and Judge Umhofer that Mr. Jarmin would likely desire a terminal
22 disposition; however, that request became moot after our noontime break, when
23 I advised the Court and all counsel that the defendants would have to plead to
24 all felonies as charged and admit all enhancements. (*Contra, Jarmin Opposition,*
25 *Page 4, lines 12-14; contra, Sanger Declaration*, page 4, line 27 – page 5, line 1)

26 (16) Also during our morning discussion on June 10, 2015, Mr. Sanger told Judge
27 Umhofer and me that Mr. Jarmin would want to plead to a misdemeanor, not a
28 felony, so that Mr. Jarmin's criminal plea would not be admissible in a civil case.

1 Judge Umhofer proposed at that time to reduce the charges to misdemeanors
2 before the plea. However, this request also became moot after our noontime
3 break, when I advised the Court and all counsel that the defendants would have
4 to plead to all felonies as charged and admit all enhancements.

5 (17) Upon the parties' return in the afternoon of June 10, in chambers I made
6 clear to the Court and counsel that I would not be reducing the felonies to
7 misdemeanors nor dismissing the enhancements, and the defendants would
8 have to plead to all felonies and enhancements as charged ("plead to the
9 sheet"). (*Contra, Jarmin Opposition*, Page 5, line 27 – Page 6, line 1; *contra,*
10 *Sanger Declaration*, Page 6, lines 18-19.)

11 (18) At that time, Judge Umhofer stated in chambers to all counsel that he was
12 also aware of the policy of the District Attorney's Office to not reduce charges
13 immediately before trial, and he indicated he would reduce the charges himself,
14 and he would "take the heat."

15 (19) I did not agree to the procedure of the Court reducing the charges to
16 misdemeanors and striking the enhancements (*Contra, Jarmin Opposition*, Page
17 6, lines 2-4; *contra, Sanger Declaration*, Page 6, lines 20-23, and page 7, line 3).
18 From that point forward, I was of the mistaken belief that the Court had the
19 power and authority to unilaterally take this action over my objection, based on
20 the statements of the Court and defense counsel.

21 (20) I did not state that I would not object to the Court's reduction of the charges
22 misdemeanors in this case on June 10 or at any other time. (*Contra, Blahnik*
23 *Declaration*, Page 4, lines 1-2.)

24 (21) On the record, the Court confirmed the deal it had reached with the
25 defendants for their no contest plea to misdemeanors. (RT 2, lines 7-20; *contra,*
26 *Jarmin Opposition*, Page 6, lines 18-20, and page 7, lines 1-2; *contra, Sanger*
27 *Declaration*, Page 7, lines 7-8.)
28

1 (22) During the Court's taking of the defendants' pleas, my agreement to the
2 "Readily Available Restitution" amount of \$107,200.00 represented the initial or
3 up-front amount from the defendants, not the total amount of restitution owed by
4 the defendants. (RT 2, lines 21-26; *contra, Jarmin Opposition*, Page 6, 20-21.)

5 (23) I reiterated to the Court that it needed to first hear from the victims before the
6 Court could finalize its decisions, and sought to set a date for the Court to hear
7 from the victims, both as to sentencing and as to restitution (RT 13, lines 2-10);
8 the Court overruled my request (RT 13, lines 20-23).

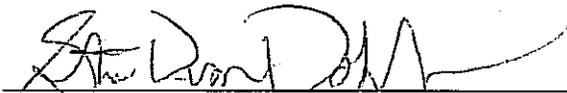
9 (24) Later that afternoon on June 10, I notified defense counsel that there was a
10 problem with the plea, in that the Court could not reduce the charges to
11 misdemeanors because they were straight felonies, and asked counsel to meet
12 as soon as possible the next day to undo the unauthorized reductions and pleas.

13 (25) The next morning, June 11, counsel replied that such charges are reducible
14 pursuant to Penal Code section 18(b); I then pressed the People's position that
15 the reduction and pleas were improper in violation of section 17(b), in violation of
16 victim's rights, and due to improper judicial plea bargaining.

17 (26) The People's Motion to Reconsider followed therefrom, and was filed the
18 next day, on June 12, 2015.

19 (27) Mr. Sanger did not meet with District Attorney Dan Dow on June 17, 2015; or
20 at any other time on this case. (*Contra: Sanger Declaration*, Page 1, lines 26-
21 27). Deputy District Attorney Chase Martin was present in chambers with Judge
22 Umhofer and counsel on the morning of June 17, 2015. I believe Mr. Sanger
23 has mistaken Deputy District Attorney Martin for District Attorney Dan Dow.

24 I declare the above statements to be true under penalty of perjury, except as to
25 those matters stated on information and belief. As to those matters, I believe them to be
26 true. Executed on this 15th day of July, 2015, at San Luis Obispo, California.

27
28 By: 
Steven D. von Dohlen, Deputy District Attorney