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SAN LUIS OBISPO SUPERIOR COURT

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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN LUIS OBISPO
12

13 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO. F-458519
14)
15 Plaintiff,) D.A. NO. 11-2058
16 vs.)
17)
18) PEOPLE'S SUPPLEMENTAL BRIEF
19) RE: MOTION TO RECONSIDER, TO
20) REINSTATE FELONY INFORMATION,
21) AND TO SET ASIDE COURT'S
22) REDUCTION OF CHARGES TO
23) MISDEMEANORS PURSUANT TO
24) PENAL CODE SECTION 17(B) AND
25) STRIKING OF ENHANCEMENTS
26)
27) Defendants.)

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

The Court has asked the People to focus on two specific questions in this
SUPPLEMENTAL BRIEF:

- (1) Is there Constitutional or statutory authority for this Trial Court to approve of
a plea bargain which provides for less than full restitution to victims by capping

1 the restitution at a bargained-for amount, particularly in light of California
2 Constituton Article 1, section 28(b), as amended on November 4, 2008 by
3 Proposition 9?

4 (2) Considering the recent California Supreme Court Case of *People v. Ford*,
5 should the People in this case be estopped from now objecting to the Trial
6 Court's actions in excess of its jurisdiction?

7
8 The answer to both of these questions is a resounding NO, and is deeply rooted in
9 the California Constitution, especially in Article 1, section 28: the Victims' Bill of Rights, as
10 originally enacted in by 1982, and as amended by voter initiative in 2008 by Proposition 9:
11 Marsy's Law. The clear mandates and policy considerations outlined in the California
12 Constitution, Article 1, §28(b), guarantee the following rights to victims:

- 13 --to be notified of and informed before any pretrial disposition of the case [§28(b)(6)]
14 --to be heard, upon request, at any proceeding, ... involving a ... plea, sentencing,
15 ... or any proceeding in which a right of the victim is at issue [§28(b)(8)]
16 --to restitution [§28(b)(13)].

17 Neither the court on its own, nor the parties by agreement, can bypass these rights
18 of victims. Therefore, as will be discussed herein, the Trial Court's actions on June 10
19 must be set aside and the defendants should be allowed to withdraw their pleas and
20 proceed to trial.

21
22 **THE REPORTER'S RECORD OF THE PROCEEDINGS IS THE ONLY**
23 **APPROPRIATE RECORD OF THE COURT'S ACTION**

24 The only appropriate record of the Court's action and case disposition here is the
25 Reporter's Record of the Proceedings. Defense counsel is attempting to augment the
26 record to include its version of summaries of chambers discussions that took place off the
27 record and discussions that defense counsel had with the prosecuting attorney. Informal
28

1 plea discussions that take place apart from formal proceedings are not proper parts of a
2 trial court's record. Augmentation is not available, for the purpose of adding material that
3 was not a proper part of the record in the trial court. (*People v. Wein* (1958) 50 Cal.2d
4 383, 411 (overruled on another ground in *People v. Daniels* (1969) 71 Cal.2d 1119, 1140).)
5 The People object to the submission and the consideration of these "settled statements"
6 especially since their contents are highly contested and do nothing to settle the record
7 between the parties as to what was said.

8
9 **A COURT CANNOT IMPOSE A RESTITUTION AMOUNT THAT PROVIDES**
10 **FOR LESS THAN FULL RESTITUTION TO A VICTIM**

11 One of the Court's questions for this Supplemental Brief asks:

12 Is there Constitutional or statutory authority for this Trial Court to approve of
13 a plea bargain which provides for less than full restitution to victims by
14 capping the restitution at a bargained-for amount, particularly in light of
California Constitution Article 1, section 28(b), as amended on November 4,
2008 by Proposition 9?

15 The short answer to this question is NO, and we shall address this question first, as
16 it also highlights some of the most important policy considerations in this case, which also
17 show why estoppel should not apply here.

18
19 **I. Full Restitution to All Victims is Mandated by the California Constitution**

20 A plea agreement that attempts to limit restitution to an amount that is less than
21 what will fully compensate the victims for their real losses violates the California
22 Constitution and is unenforceable. It is the People's position that the total amount of
23 restitution owing to the victims of these crimes far exceeds \$107,200.00. Consequently,
24 the pleas which were conditioned upon a cap on the amount of restitution must be
25 vacated.

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27 ////

1 **II. Victims of Crime Have a Constitutionally Vested Right to Receive Full**
2 **Restitution and Which Cannot Be Abrogated or Limited By the Court or the**
3 **Prosecutor**

4 The California Constitution explicitly provides victims of crime with a constitutional
5 right to receive restitution. Furthermore, restitution shall "be of a dollar amount that is
6 sufficient to fully reimburse the victim or victims, for every determined economic loss
7 incurred as the result of the defendant's criminal conduct, ..." (§ 1202.4, former subd. (g).)
8 The court in *People v. Rowland* (1997) 51 Cal. App. 4th 1745, briefly discussed the
9 absolute right to restitution and its origins:

10 In 1982, California voters by initiative added a provision to the state
11 Constitution establishing a new constitutional right for crime victims to obtain
12 restitution for losses suffered as a result of a criminal act and directing the
13 Legislature to enact laws empowering the trial courts to issues such orders.
14 (Cal. Const., art. I, § 28, subd. (b).) Penal Code section 1202.4 carries out
15 this mandate. At the time of the sentencing hearings herein, it provided in
16 pertinent part: "In every case in which a victim has suffered economic loss as
17 a result of the defendant's conduct, the court shall require that the defendant
18 make restitution to the victim or victims" (§ 1202.4, former subd. (f).)
19 "Restitution ordered pursuant to subdivision (f) shall be imposed in the
20 amount of the losses, as determined. The court shall order full restitution
21 unless it finds clear and compelling reasons for not doing so, and states them
22 on the record. ... Restitution shall, to the extent possible, be of a dollar
23 amount that is sufficient to fully reimburse the victim or victims, for every
24 determined economic loss incurred as the result of the defendant's criminal
25 conduct, ... [including wages or profits lost by the victim due to time spent
26 assisting the police or prosecution]." (§ 1202.4, former subd. (g); emphasis
27 added.) "A restitution order imposed pursuant to subdivision (f) shall identify
28 the losses to which it pertains, and shall be enforceable as a civil
judgment...." (§ 1202.4, former subd. (h).) As can be seen, victim restitution
is mandated by both the Constitution and section 1202.4.

(*Rowland*, 51 Cal. App. 4th at 1750-51(footnotes omitted).)¹

22 Full victim restitution is mandated by both the Constitution and California Penal
23 Code section 1202.4. It is clear that courts of appeal recognize this right as belonging to
24 the victims of crime² and as such, "it cannot be bargained away or limited by the
25 prosecution, nor can the prosecution waive the victim's right to restitution. (*People v.*

1 Some provisions of 1202.4 were formerly stated in Government Code section 13967, subdivisions (a) and (c);
2 section 1202.4 was amended effective January 1, 1997.

1 *Pierce*, (2015) 234 Cal. App. 4th 1334, 1337-38; see *People v. Valdez* (1994) 24
2 Cal.App.4th 1194, 1202–1203, 30 Cal.Rptr.2d 4 [victim restitution is not subject to
3 negotiation between the prosecution and defense, and cannot be waived or limited by the
4 prosecution]; accord, *People v. Brown* (2007) 147 Cal.App.4th 1213, 1226, 54 Cal.Rptr.3d
5 887 [“Victim restitution cannot be bargained away by the People”].) Indeed, on the motion
6 of a victim, a court may at any time correct a sentence that is rendered invalid due to the
7 omission of a restitution order. (§ 1202.46.)

8 Just as a prosecutor does not have the discretion to limit or waive a victim’s right to
9 full restitution, trial courts have very little latitude concerning matters of restitution. The
10 court in *People v. Brown* noted that “[a] trial court has *no* discretion over the issuance of
11 the award itself and “really very little discretion” over the amount of the award.” (*Brown*,
12 147 Cal.App.4th at 1225 (citing *Rowland* 51 Cal.App. 4th at 1751-1752, 1754).) This is
13 because the powerful language of Section 1202.4 “requires the award be set in an amount
14 which will fully reimburse the victim for his or her losses unless there are clear and
15 compelling reasons not to do so.” (*Id.* at p. 1225 (citing *Rowland*, 51 Cal.App. 4th at 1754).)

16 A court’s reasons for awarding less than full restitution must be stated on the record. (§
17 1202.4, subd. (f).) “Thus, just as a sentence lacking a victim restitution award is invalid, a
18 sentence awarding less than full victim restitution is similarly unauthorized when the court
19 fails to state clear and compelling reasons for its decision.” (*Brown*, 147 Cal. App. 4th at,
20 1225-1226.)

21 A review of the plea colloquy and the preceding discussions show that there was
22 some cursory discussion of restitution among all of the parties and the Court. (Reporter’s
23 Transcript of Proceedings; 6/10/2015; pp: 2, 4-5.) To the extent that the defendants and
24 the Court contemplated that the plea agreement limited restitution to a grand total of
25 \$107,200.00 (or \$110,000.00 if Ms. Jordan did not make timely payment), the record is

27 ² A “victim,” for purposes of section 1202.4 (former Gov Code §13967(c)) is a person who is the object of a
28 crime. (See *People v. Crow* (1993) 6 Cal.4th 952, 957 [a defrauded government agency is a “victim” entitled to
restitution pursuant to § 13967 subdivision (c)].)

1 completely void of any "clear and compelling reasons for [the court's] decision." (*Brown*,
2 147 Cal. App. 4th at 1226.) The Court stated implicitly that if restitution exceeds the
3 amount originally contemplated by the defendants, it would allow them to withdraw their
4 pleas. (Reporter's Transcript of Proceedings; 6/10/2015; pg: 15.) This demonstrates that
5 the plea was conditioned upon a cap on the amount of restitution. Because this cap
6 improperly limits the amount of restitution, the pleas must be vacated.

8 **III. Specific Performance of an Unconstitutional Plea is Not a Proper Remedy**

9 If this Court is persuaded that the defendants thought they were agreeing to a fixed
10 and final restitution amount totaling \$107,200.00, then the appropriate remedy is to allow
11 the defendants to withdraw their pleas and stand trial on the original charges.

12 In *People v. Brown*, the Court of Appeal explored whether to order specific
13 performance of a plea that sought to limit an award of restitution. Citing *People v. Jackson*
14 (1981) 121 Cal.App.3d 862, 869, the court held that "specific performance is not an
15 available remedy when the negotiated sentence is invalid or unauthorized." (*Brown, supra*,
16 147 Cal. App. 4th at 1224.) Specifically, the court held that "a negotiated plea may not be
17 specifically enforced to the extent it directs the sentencing court to order less than full
18 victim restitution unless the record contains a statement of extraordinary and compelling
19 reasons for the limitation." (*Id.*, at 1226.) As in *Brown*, our record here contains no such
20 statement of extraordinary and compelling reasons to limit victim restitution.

21 Therefore, this Court's order here limiting victim restitution cannot be enforced and
22 and must be set aside.

27 ////

1 **Conclusion on the Court's Question Regarding Restitution**

2 A plea agreement that attempts to limit restitution to an amount that is less than
3 what will fully compensate the victims for their real losses violates the California
4 Constitution and is unenforceable, regardless of whether it was the result of a bargained
5 agreement with the prosecution. Therefore, the Constitutional and statutory authority
6 make it clear that a court **cannot** order less than full restitution at a bargained-for amount.
7 Consequently, the pleas here must be vacated and the original felony charges reinstated.

8
9
10 **THE PEOPLE SHOULD NOT BE ESTOPPED FROM SEEKING TO SET ASIDE**
11 **THE TRIAL COURT'S ACTIONS, PURSUANT TO PEOPLE V. FORD**

12 The Court's other question for this Supplemental Brief is whether the People should
13 be estopped from seeking to reverse the Trial Court's actions in excess of its jurisdiction, in
14 light of the California Supreme Court's recent holding in *People v. Ford* (2015 DJDAR
15 5788), California Supreme Court. No. S212940, filed May 28, 2015.

16 The short answer to this question is also NO, and is based on the equities and
17 policy considerations impacted by the Court's action. The People are not estopped
18 because of the failure to object at the time of the reduction and plea.

19 In *Ford*, the Supreme Court held that the defendant was estopped under the facts of
20 that case from contesting the trial court's order of victim restitution after the expiration of
21 the defendant's probation period. In *Ford*, the issue of restitution was in the process of
22 being litigated, the hearing having been continued several times while the defendant was
23 on probation. The defendant consented to a continuance of the hearing to a date one
24 week after probation was to expire. At that next hearing date, the defendant attempted to
25 gain an advantage by turing around and claiming that the court now lacked jurisdiction to
26 hear the issue because the date he consented to was just after the expiration of probation.
27 (*Ford*, 2015 DJDAR 5789-5790.) Ultimately, the Supreme Court based its decision on
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1 several factors, including the defendant's contribution and consent to the delay, his lack of
2 any prejudice suffered due to the delay, his having already benefitted from the bargain of
3 his plea agreement and the continuances of his restitution hearings, and that neither the
4 People nor the victim unreasonably contributed to the delay. Considering these equities
5 and the overall public policy concerns regarding the proper administration of the courts,
6 probation, and victims' rights to restitution, the Supreme Court determined it was
7 appropriate to apply the doctrine of estoppel against the defendant in *Ford*.

8 As will be discussed herein, the opposite is true for these factors in our present
9 case. Both equity and public policy considerations direct that the People are entitled to
10 seek reversal of actions in excess of the Court's jurisdiction.

11 In *Ford*, the Supreme Court started its analysis stating:

12 [T]he Constitution, a statute, or relevant case law may constrain the
13 court to act only in a particular manner, or subject to certain limitations.
14 [Citations] ...When a trial court has fundamental jurisdiction but fails to act in
15 the manner prescribed, it is said to have acted "in excess of its jurisdiction."
16 [Citation.] ... [S]uch a ruling is treated as valid until set aside." [Citation.]
(*Ford*, 2015 DJDAR 5758, 5789.)

16 Then, in relation to the specific facts in *Ford*, the Supreme Court pointed out that a
17 party *may* be estopped from setting aside such a ruling if the party sought or consented to
18 the action in the period after probation has ended. "Whether the party should be estopped
19 depends on a weighing of equities in the particular case, the effect of estoppel on the
20 functioning of the courts, and considerations of public policy." [Citation.] (*Ford*, 5790.) The
21 Supreme Court pointed to three previous cases where the estoppel had been applied
22 under similar circumstances, where the defendants sought and obtained a continuance of
23 court action beyond the expiration of their probation periods, then attempted to complain
24 later when the respective trial courts imposed the delayed action. (*Id.*)

25 The new distinction raised by *Ford* was whether a defendant's *mere consent*, or his
26 failure to object, to action beyond the expiration of probation could also subject the
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1 defendant to later being estopped. Mr. Ford did not seek a continuance to the specific
2 date beyond the expiration of probation, but he did consent to it and did not object.

3 The Supreme Court recognized that mere consent or failure to object can cause a
4 party to be estopped later. Therefore, since Ford's mere consent or failure to object raised
5 *the possibility* that estoppel might apply, the Supreme Court then proceeded to its analysis
6 of equities and public policy considerations to determine whether estoppel *should* apply.
7 Based on the specific facts in *Ford*, including the defendant's own previous contribution
8 and consent to the delay, his lack of any prejudice suffered due to the delay, his having
9 already benefitted from the bargain of his plea agreement and the continuances of his
10 restitution hearings, and that neither the People nor the victim unreasonably contributed to
11 the delay, the Supreme Court found that Ford was estopped from contesting the trial
12 court's awarding of restitution. (*Ford*, 5790-5791.)

13 It is imperative to note that the Supreme Court did *not* hold that estoppel *must* apply
14 simply because the defendant consented or did not object to the alleged unauthorized
15 action, but merely that estoppel *may* apply. The true test for whether estoppel should
16 apply is the evaluation of equities and public policy considerations.

17 The Supreme Court went on in *Ford* to highlight two cases where the Court of
18 Appeal had declined to estop parties from later challenging actions that the parties
19 themselves had actually requested and obtained. (*People v. Mendez* (1991) 234
20 Cal.App.3d 1773 [prosecution stipulated to unauthorized post-conviction relief for
21 defendant, but later was not estopped from setting aside the stipulation]; *People v.*
22 *Blakeman* (1959) 170 Cal.App.2nd 596 [Court of Appeal declined to estop a defendant
23 probationer from challenging a banishment condition, even though he himself had
24 proposed the banishment].)

25 "Estoppel is not appropriate when allowing a deviation from the law in a particular
26 case would cause confusion in the processing of cases by different litigants or when it
27 would thwart public policy" [Citation.] (*Ford*, 5790).

1 It is in this analysis of equities and public policy where *Ford* is clearly
2 distinguishable from the case at hand.

3
4 **I. Equity and Public Policy Considerations Demand that the Court's**
5 **Action Should be Set Aside and Estoppel Should Not Apply**

6 There are several fundamental equity and public policy considerations affected by
7 the court's action in this case, each of which taken alone supports a ruling that the Court's
8 action should be reversed and estoppel should not apply. These include ensuring victims'
9 Constitutional right to the proper determination of restitution, honoring victims'
10 Constitutional right to be heard regarding plea, adjudication and sentencing, the prohibition
11 against judicial plea bargaining, and maintaining the specific statutory scheme that
12 authorizes a court to reduce a felony to a misdemeanor. When taken together, all of these
13 circumstances combined compel the conclusion that the Court's actions should be
14 reversed and that estoppel does not apply.

15
16 **II. The Court's Reduction of Felonies to Misdemeanors Here is Not**
17 **Authorized by the Legislature and Invades the Province of the**
18 **Prosecutor.**

19 As was discussed in the People's initial Motion to Reconsider, the court's reduction
20 of felonies to misdemeanors at this stage of the proceedings was unauthorized under
21 Penal code section 17(b), which specifically defines the limited situations under which a
22 court can reduce a felony charge to a misdemeanor. Here, no judgment, entry of a plea,
23 or finding of guilt had occurred. [§§17(b)(1), 17(b)(3)]. The preliminary examination had
24 already taken place and the defendants had been held to answer pursuant to section 872.
25 [§17(b)(5)] Also, sections 17(b)(2) and 17(b)(4) are likewise inapplicable here. A grant of
26 probation occurs *after* a plea, finding, or verdict of guilty. (§ 1191 ["In a felony case, after a
27 plea, finding, or verdict of guilty ..., the court shall appoint **a time for pronouncing
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1 judgment"]; Cal. Rules of Court, rule 4.433(a)(2) [at time set for sentencing under section
2 1191, sentencing judge must determine whether to grant probation to eligible defendant].)

3 As a policy consideration, this unauthorized act also violates the separation of
4 powers doctrine, where the court has invaded the exclusive province of the prosecutor, in
5 their respective roles as defined by the legislature.

6 [A] magistrate's authority under section 17(b)(5) relates to an important and
7 unique purpose of preliminary examinations. A preliminary hearing operates
8 " "as a judicial check on the exercise of prosecutorial discretion" ' and helps
9 ensure ' "that the defendant [is] not ... charged excessively" ' [citation], which
10 can confer a ' "tactical advantage ... upon the prosecutor in respect to plea
11 bargaining." ' ' [Citation.]

12 If a magistrate determines that a wobbler offense "is a misdemeanor"
13 under section 17(b)(5), the People may not move to reinstate the felony
14 complaint under section 871.5. [Citation.] Conversely, if the magistrate finds
15 the People have appropriately charged the defendant with a felony, the
16 defendant is held to answer for the felony charge. (§ 872, subd. (a).)
17 Thereafter, only the prosecution may reduce the charge, because the
18 executive alone is entrusted with "the charging function" and has the sole
19 "prerogative to conduct plea negotiations." [Citations.] (*People v. Superior
20 Court (Jalalipour)* (2015), 232 Cal.App.4th 1199, 1208-1209.)

21 III. The Court's Action Violates the Constitutional Mandate for Victims to 22 Be Heard Regarding Plea and Sentencing.

23 The court in *Ford* recognized that "estoppel is not appropriate when allowing a
24 deviation from the law in a particular case would cause confusion in the processing of
25 cases by different litigants or when it would thwart public policy." [Citation.] (*Ford*, 2015
26 DJDAR 5790). When the charges were reduced, the victims were not given the
27 opportunity to receive notice and be heard. Reducing seven felony charges to
28 misdemeanors without giving the victims of the defendant's crimes a chance to voice their
concerns effects significant policy considerations and Constitutional rights.

California Constitution, Article I, Section 28,(b)(8) gives the victims of crimes a due
process right: "to be heard, upon request, at any proceeding, including any delinquency
proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction
release decision, or any proceeding in which a right of the victim is at issue."

1 Similarly, California Penal Code Section 1191.1 "was enacted as part of an initiative
2 measure entitled "The Victim's Bill of Rights," the general goal of which was to promote the
3 rights of victims of crime. The specific goal of section 1191.1 was to mandate a previously
4 optional procedure; to *require* the judge to listen to and consider the views of the victim."
5 (*People v. Stringham* (1988) 206 Cal. App. 3d 184, 195-96 (internal citations omitted).)

6 It is undisputed that the court has not pronounced sentence in this case. Thus, the
7 court still has the authority to reject the plea agreement at sentencing. (*People v.*
8 *Woodard* (1982) 131 Cal.App.3d 107, 110, 182 Cal.Rptr. 254) or "upon [the court] being
9 more fully informed about the case." (*People v. King* (1981) 123 Cal.App.3d 406, 408, 176
10 Cal.Rptr. 507; see *People v. Beasley* (1970) 5 Cal.App.3d 617, 624, fn. 3, 85 Cal.Rptr.
11 501.) A change of the court's mind is thus always a possibility. However, by reducing the
12 charges to misdemeanors at an unauthorized stage of the proceedings and without
13 hearing from the victims, the Court acted in excess of its jurisdiction and without being
14 informed of all issues that bear on whether reduction is appropriate.³ Victims are entitled
15 to have a meaningful opportunity to protest a plea bargain that will allow a defendant to
16 escape the punishment which the victim or next of kin feels is appropriate to the crime. (*Id.*
17 at 197.) This is not a mere formality and courts of appeal have taken care to "preserve a
18 provision of "The Victim's Bill of Rights" from becoming a dead letter in the significant
19 context of negotiated dispositions." (*Stringham*, 206 Cal. App. at 197.)

20 The reasonable cure is to reinstate the charges as felonies and either allow the
21 defendants to proceed to sentencing on felony charges or to withdraw their pleas. This
22 protects the strong public policy interest in respecting victims' rights and does not prejudice
23 the defendants in **any way**, as they can proceed to trial or renegotiate a plea agreement.

26 ³ Reading Section 17(b) in conjunction with Section 1191.1 demonstrates that the first meaningful time that the
27 victims of these crimes would be heard on *either* the issue of reduction or the substantive punishment would be *at*
28 sentencing. It is there they could be heard on whether reduction is appropriate and, at that time, the Court could make a
properly informed decision.

1 **IV. The Court's Action Striking the Enhancements Violates the Policy**
2 **Purposes of Protecting Victims, Deterring Large-Scale Crime, and the**
3 **Constitutional Mandate for Full Victim Restitution**

4 As part of its action, the Court also struck the charged enhancements for Excessive
5 Taking or Loss Exceeding \$1.3 million (Penal Code section 12022.6(a)(3)), the Aggravated
6 White Collar Crime Enhancement for Taking or Loss Exceeding \$500,000 (Penal Code
7 §186.11(a)(2), and the Presumptive State Prison Enhancement for theft exceeding
8 \$100,000 (Penal Code §1203.045).

9 Case law and legislative intent for these enhancements emphasize that the
10 purposes of these enhancements include protecting victims from crime and fraud,
11 particularly large-scale crimes and takings (*People v. Bowman* (2010) 210 Cal.App.3d
12 443, 447; *People v. Green* (2011) 197 Cal.App.4th 1485, 1492.), and are also intended to
13 help achieve the Constitutionally mandated purpose of achieving full victim restitution.
14 (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1242-1243.).

15 The People here seek to undo the Court's action striking these enhancements.
16 Reinstating these enhancements would advance these policy purposes of protecting
17 victims and obtaining full victim restitution. Without these enhancements, particularly the
18 Aggravated White Collar Crime Enhancement (§186.11), the People and the victims lose
19 the opportunity to potentially liquidate assets of the defendants for criminal restitution after
20 conviction. The People believe that far more is actually available for restitution from the
21 defendants' assets than the \$107,200.00 offered by the defendants, and restoring these
22 enhancements will enable the People and the victims to maximize the victims' recovery
23 upon the defendants' convictions of the charges and true finding of the enhancement.

24 Therefore, several strong policy purposes are served by reinstating the
25 enhancements and finding that estoppel does not apply.

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27 // // //

1 **V. The Court's Action Violates the Constitutional Right of Victims to Full**
2 **Restitution.**

3 As discussed previously, the Court's action bypasses the victims' rights to full
4 restitution. This is a substantial policy consideration that by itself warrants that estoppel
5 should not apply in this case, and directs that the Court set aside its prior action, thereby
6 curing this error.

7 **VI. The Court's Action Violates the Prohibition Against Judicial Plea**
8 **Bargaining.**

9 The People discussed at length in the initial Motion to Reconsider the prohibition
10 against judicial plea bargaining and its occurrence in the present case. The People
11 mention it again here as one more significant policy consideration that must weigh in favor
12 of both setting aside the Court's prior action, and for not estopping the People for seeking
13 to correct the actions in this case.

14
15 **VII. The Equities in This Case Differ Significantly from those in *Ford*, such**
16 **that the People Shoud Not be Estopped Here.**

17 There are several significant differences between the situation in *Ford* and our
18 present case.

19 Specifically in *Ford*, the Supreme Court found that the defendant's own prior
20 requests played a role in delaying the proceedings. Also, the trial court had already found
21 a prima facie case supporting the amount of restitution requested by the victims, and
22 merely granted Mr. Ford's request for more time to present his rebuttal. The defendant
23 also had already received his benefit of the plea bargain in his case – dismissal of serious
24 enhancement allegations – in exchange for his no contest plea and his agreement to pay
25 restitution. The Supreme Court also found that Mr. Ford did not claim to be prejudiced in
26 any way by the continued restitution hearing; nor did Mr. Ford point to any evidence that
27 the People or the victim caused any unreasonable delay regarding the determinate of
28

1 restitution. Weighing these equities against the victims' right to restitution, the Supreme
2 Court held that defendant Ford was estopped from challenging the trial court's jurisdiction.
3 "To hold otherwise would penalize the trial court, the People, and the victim for attempting
4 to accommodate defendant's request for more documentation." (*Ford*, 2015 DJDAR at
5 5790.)

6 By contrast, the equities in our present case, as detailed below, weigh in favor of
7 enabling the People to set aside the Court's action.

8 **a. Prejudice**

9 In our present case, the People and the victims are prejudiced by the Court's action.
10 The Court's reduction of the charges to misdemeanors cuts off the People's and the
11 victims' opportunity and right to be heard regarding the factors for the appropriate
12 disposition of the case. The victims have also lost their opportunity to make their individual
13 cases for restitution, and by the Court's striking of the enhancements, the victims have lost
14 the opportunity for potential restitution that was available by way of Penal Code section
15 186.11, the Aggravated White Collar Crime Enhancement.

16 Conversely, the defendants in our present case would not be prejudiced by the
17 court setting aside its prior actions. The defendants would be placed right back in their
18 previous position from just two weeks ago, able to proceed to trial and present any and all
19 defenses, just as they were beforehand.

20 **b. Immediate Correction Sought**

21 Also, here the errors were immediately brought to the attention of all parties and
22 sought to be remedied before any party could reasonably claim to have relied on the
23 Court's action. The People contacted the defense later the same day and conferenced the
24 issue with the defense and the Court the next day. This is also unlike *Ford* and the similar
25 cases *Ford* cites, where the estopped defendants did not seek to block the alleged
26 unauthorized court action until after they had already received the full benefit of the prior
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1 court delay that they had requested or consented to – the same delay that led to the
2 circumstance about which they were later complaining.

3 **Conclusion on the Court's Question Regarding *People v. Ford***

4 While *People v. Ford* stands for the proposition that failing to object to a particular
5 court action in excess of the court's authority *may* estop a party from seeking to set aside
6 that action later, the failure to object itself is not determinative of the estoppel question.
7 Instead, the court must evaluate the equities and public policy considerations to determine
8 whether estoppel should apply. In our present case the several equities and public policy
9 considerations each weigh in favor of setting aside the Court's prior action; when taken
10 together, these considerations mandate it. The People should not be estopped from
11 seeking the corrective action to ensure that the law is followed and justice is served.

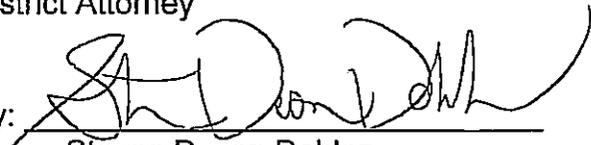
12
13 **CONCLUSION**

14 It is the People's contention that the Court acted in excess of its jurisdiction by
15 reducing the charges to misdemeanors and striking the enhancements at this stage of the
16 proceeding. The Court also improperly limited the amount of restitution. Therefore, the
17 People respectfully request the Court reconsider its prior action and reinstate the felony
18 information, set aside its reduction of the charges to misdemeanors per Penal Code
19 section 17(b) and striking of the enhancements, and to allow the defendants to withdraw
20 their no contest pleas.

21
22 Dated: June 24, 2015

Respectfully Submitted,

23 Dan Dow
24 District Attorney

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26 By: 

Steven D. von Dohlen
Deputy District Attorney