

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

JUSTICE CENTER: Central Justice Center
Civil Operations - Appellate Division
700 Civic Center Dr. West
Santa Ana, CA 92701

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 14 2009

ALAN CARLSON, Clerk of the Court

APPELLANT: **Franco**

RESPONDENT: **People**

BY H. POTTER, DEPUTY

NOTICE OF FILING OF JUDGMENT/ORDER
Appellate Division

APPEAL CASE NUMBER:
30-2008-00093057
TRIAL COURT CASE NUMBER:
FL45261PE

To the above named parties and their attorneys of record:

You are notified that a **Order** in the above entitled matter was filed on: 8/14/09

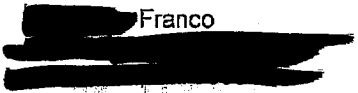
A Copy of the **Order** is attached for reference.

CLERK'S CERTIFICATE OF MAILING

Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attn: Kimberly Hall Barlow; Krista MacNevin Jee

By Interoffice Delivery:

North Justice Center – Traffic – Appellate Desk
Hon. Allen K. Stone, Commissioner – c/o J.A.G.
Hon. Sheila F. Hanson, Supervising Judge – Dept. N7

 Franco

Anthony Rackauckas
O.C. District Attorney
P.O. Box 808
Santa Ana, CA 92701

I certify that I am not a party to this action and that this certificate was mailed in accordance with Section 1013a of the Code of Civil Procedure. A copy of this Notice of Filing of Judgment/Order with a copy of the Judgment/Order was deposited in the United States mail, in a sealed envelope with postage fully prepaid addressed as shown above. The mailing and this certification occurred at Santa Ana, California, on August 14, 2009

ALAN CARLSON, Clerk of the Court

HEATHER POTTER

H. Potter, Deputy Clerk

NOTICE OF FILING OF JUDGMENT/ORDER

AUG 14 2009

APPELLATE DIVISION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ALAN CARLSON, Clerk of the Court
H. Potter
BY H. POTTER

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5 PEOPLE OF THE STATE OF) CASE NO. 30-2008-93057
6 CALIFORNIA,)
7)
8 Plaintiff and)
9 Respondent,)
10 vs.)
11)
12)
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PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. [REDACTED] FRANCO Defendant and Appellant.

ORDER ON APPEAL from the SUPERIOR COURT of ORANGE COUNTY NORTH JUSTICE CENTER

HON. ALLEN K. STONE, COMMISSIONER

12 The City of Fullerton, as purported "Real Party in Interest,"
13 moves to recall the remittitur which was issued on December 9,
14 2008. The motion is denied for the reasons discussed below.

15 Long or unexcused delay in seeking recall of a remittitur
16 justifies denial of relief. Action must be taken by the moving
17 party "as soon as he learns of the facts upon which the motion is
18 based." *Bryan v. Bank of America* (2001) 86 Cal.App.4th 185, 192.
19 The City acknowledges it had, at minimum, constructive notice of
20 the decision in this case no later than January 2009. No
21 satisfactory explanation for the delay in seeking relief has been
22 provided.
23

24 Notice of the appeal was provided to the People of the State
25 of California in care of the Orange County District Attorney.
26 Pursuant to Government Code section 26500, the district attorney
27 is the public prosecutor "except as otherwise provided by law."
28

1 While the law provides for a City Attorney to act as the People's
2 designated representative, the City of Fullerton has not so
3 designated itself with the court as a general matter in traffic
4 matters, as it's counsel acknowledged at the hearing on the
5 motion. Moreover, the court's records show that the City received
6 notice of the appeal by virtue of the "Notice of Filing Notice of
7 Appeal" served by the clerk on the Fullerton Police Department in
8 care of Officer McElwee. Evidence Code section 641 provides a
9 statutory presumption that an item properly mailed is received in
10 the ordinary course of mail. Although Officer McElwee has
11 declared that she, personally, did not receive the notice, her
12 declaration is insufficient to rebut the presumption that the
13 notice was delivered to the Fullerton Police Department. It is
14 not the court's obligation to ensure that the Police Department
15 delivers the notice to the named officer.
16
17

18 The City attempts to place the burden of notifying any actual
19 or potential "Real Party in Interest" on the court. The court
20 cannot be expected to assume such a burden. In effect, the City
21 would place on the court the obligation to ascertain the identity
22 of any third party whose contractual rights might be affected by
23 its decisions, and provide notice to those parties at the risk of
24 entering a "void" judgment. The City has provided no authority
25 for the proposition that the court is obligated to undertake such
26 a burden, or how the court should go about making such
27 determinations.
28

1 It should be noted that the case cited by the City for the
2 proposition the judgment in this case is "void" is so factually
3 distinguishable from this case as to have no application. An
4 opinion's authority is no broader than its factual setting, and
5 the parties cannot rely on a rule announced in a factually
6 dissimilar case. *Finegan v. County of Los Angeles* (2001) 91
7 Cal.App.4th 1, 9. *Reid v. Balter* (1993) 14 Cal.App.4th 1186
8 involved dismissal of a civil case based on plaintiffs' failure to
9 appear at a status conference, where they had not been given
10 proper notice that the case could be dismissed if they failed to
11 appear. The case is not authority for the argument that the
12 judgment in this case is void for lack of notice to a claimed
13 "Real Party in Interest" who has never appeared in the litigation,
14 nor given notice to the court of its desire to do so.
15

16
17 The court is not persuaded that the California Supreme Court
18 has ruled that the City is a Real Party in Interest entitled to
19 prior notice. Although the Supreme Court listed the City as a
20 Real Party in Interest in the docket in *People v. Fischetti*, the
21 Court did not hold specifically that the City has standing to
22 appear in automated enforcement actions.
23

24 The motion to recall the remittitur is denied.

25
26 
27 _____
*GREGG L. PRICKETT Acting Presiding Judge

28 * Sitting by assignment of the Chief Justice of the California
Supreme Court.