

1 **Mr. Freeman,**
2 **1234 Nowere Ave.**
3 **City, CA 99999**

4 **In Propria Persona**

5
6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF _____**

8
9 **Officer Name and ID.,**) **CASE NO. xx_XXXXXX**
10 **number**)
11 **[Name of agency]**) **DEMURRER TO CITATION**
12 **Party unknown,**) **WITH POINTS AND AUTHORITIES**
13 **vs.**)
14 **Accused.**) **Date: (Date of hearing)**
) **Time: (time of hearing)**
) **Courtroom: (Courtroom number)**

15
16 **I**
17 **DEMURRER**

18 1. **To the District Attorney: Please take note of the venue listed**
19 **above. I**

20 **will ask the court to sustain my Demurrer as more fully set forth**
21 **below.**

22 **This is a preliminary Memorandum of Authorities. I reserve the right**
23 **to**

24 **upgrade it consistent with the rules regarding time for service.**
25 **Defendant demurs to the citation under to California Penal Code**
(CPC) §1004.2; to wit:

That it does not substantially conform to the provisions
of Sections §950 and §952, and also Section §951 in case of

1 **an indictment or information. Section §959 the accusatory**
2 **pleading**
3 **is sufficient if it can be understood therefrom.**

4 **2. Nowhere on the notice to appear does the following appear:**

- 5 **a. Whether this is a criminal or civil action.**
- 6 **b. The name of the plaintiff in this action.**
- 7 **c. The nature of the proceeding.**
- 8 **d. The signature of the District Attorney, if it is a criminal action.**

9 **d**

10 **Therefore without those items on the notice to appear, the notice to**
11 **appear (citation) is vague on its face, this court must sustain this**
12 **demurrer and the action against accused must be dismissed.**

13 **II**

14 **POINTS AND AUTHORITIES**

15 **4. The following points and authorities are submitted in support of**
16 **this**
17 **demurrer.**

18 **5. The accused signed a "Notice to Appear," as referenced in**
19 **Vehicle**

20 **6. Code §40500. Notice to appear is defined in Blacks Law**
21 **Dictionary**

22 **7. (6th) as:**

23 **"Notice to appear. Shorthand expression for the form of**
24 **summons**
25 **or order of notice in which the defendant is ordered to appear and**
26 **show**
27 **cause why judgement should not be entered against him. Fed R.**
28 **Civil P.**

29 **4 (b).**

1 **Thus a notice to appear is a civil procedure. Nowhere on the notice**
2 **to**
3 **appear does the "People of the State of California; appear, which**
4 **would**
5 **indicate a public offense. California Government Code (CGC) §100**
6 **reads:**

7 **;Sovereignty in people; Writs and processes;**

8 **(a) The sovereignty of the state resides in the**
9 **people thereof, and all writs and processes shall**
10 **issue in their name.**

11 **(b) The style of all process shall be; The People of**
12 **the State of California," and all prosecutions shall be**
13 **conducted**
14 **in their name and by their authority"(Emphasis added)**

15 **Further, Amendment VI of the United States Constitution states:**

16 **"In all criminal prosecutions, the accused shall enjoy the**
17 **right....,**
18 **to be informed of the nature and cause of the accusation..."**

19 **In addition, California Penal Code (CPC) §684 reads:**

20 **"A criminal action is prosecuted in the name of the people of**
21 **the**
22 **state of California, as a party, against the person charged with the**
23 **offense."; (Emphasis added)**

24 **Thus, the notice to appear (citation) is not being brought by "The**
25 **People**
26 **of the State of California" against accused, and as such the citation**
27 **is**
28 **vague on its face as one of the parties is not named. Therefore, this**
29 **court must sustain this demurrer and the action against accused**
30 **must**

1 **be dismissed.**

2 **6. The notice to appear is not verified. The signing of a notice by**
3 **the**
4 **officer under penalty of perjury that the offense occurred does not**
5 **constitute a "verified notice to appear" to be used as a verified**
6 **complaint. Black's Law Dictionary, (6th) edition, defines verify**
7 **(verified):**

8 **"Verify. To confirm or substantiate by oath or affidavit.**
9 **Particularly used of making formal oath to accounts, petitions,**
10 **pleadings, and other papers. The word "verified," when used in a**
11 **statute, ordinarily imports a verify attested by the sanctity of an**
12 **oath.**

13 **It is frequently used interchangeably with "sworn ".**

14 **The California Code of Civil Procedure §2009 states:**

15 **"An affidavit may be used to verify a pleading or a paper in a**
16 **special proceeding, to prove the service of a summons, notice, or**
17 **other**
18 **paper in an action of special proceeding, to obtain a provisional**
19 **remedy,**
20 **the examination of a witness, or a stay of proceedings, and in**
21 **uncontested proceedings to establish a record of birth, or upon a**
22 **motion, and in any other case expressly permitted by statute."**

23 **The wording of Vehicle Code §40513 (b) states:**

24 **"If the notice to appear is not verified, the defendant may at**
25 **the**
26 **time of arraignment, request that a verified complaint be filed."**

27 **The Penal Code, §853.9, is very specific and states:**

28 **"If, however, the defendant violates his or her promise to**
29 **appear in**

1 court, or does not deposit lawful bail, or pleads other than "guilty"
2 or
3 "nolo contendere" to the offense charged, a complaint shall be filed
4 which shall conform to the provisions of this code and which shall
5 be
6 deemed to be an original complaint and thereafter proceedings shall
7 be
8 had as provided by law, except that a defendant may, by an
9 agreement in
10 writing, subscribed by him or her and filed with the court, waive the
11 filing of a verified complaint and elect that the prosecution may
12 proceed
13 upon a written notice to appear. This comes after the notice to
14 appear is
15 established as a complaint to which the accused may enter a plea
16 too.

17 (Emphasis added)

18 The notice to appear does not conform to the requirements listed.
19 Therefore, the notice to appear is vague on its face and this court
20 must
21 sustain this demurrer and the action against the accused must be
22 dismissed.

23 7. To use the notice to appear as a complaint it must have the same
24 qualifications as a verified complaint:

- 25 a. Whether this is a criminal or civil action.
- 26 b. The name of the plaintiff in this action.
- 27 c. The nature of the proceeding.
- 28 d. The signature of the District Attorney (if it is a criminal
29 action).

30 The court may not enter a plea on defendant's behalf if he refuses
31 to

1 enter a plea to a notice to appear. There is no pleading on the part
2 of
3 the accused if this is a civil matter. Should the court attempt to try
4 the
5 Defendant under a criminal action, a criminal complaint would have
6 to
7 be filed by the District Attorney under California Government Code
8 §26500.

9 **CGC §26500 reads:**

10 "The district attorney is the public prosecutor, except as
11 otherwise
12 provided by law. The public prosecutor shall attend the courts, and
13 within his or her discretion initiate and conduct on behalf of the
14 people
15 all prosecutions for public offenses." (Emphasis added)

16 Additionally, in *People v. Municipal Court* 27 Cal.App.3d 193 Rptr
17 645 (1972), the court wrote:

18 "Moreover, due process of law requires that criminal
19 prosecutions
20 be instituted with the regular processes of law, which processes
21 include
22 the requirement that the institution of any criminal proceeding be
23 authorized and approved by the district attorney" (Emphasis
24 added)

25 **959. The accusatory pleading is sufficient if it can be understood
therefrom:**

**That it is filed in a court having authority to receive it, though the
name of the court be not stated.**

**2. If an indictment, that it was found by a grand jury of the county
in which the court was held, or if an information, that it was**

1 subscribed and presented to the court by the district attorney of the
2 county in which the court was held.

3 **3. If a complaint, that it is made and subscribed by some natural**
4 **person and sworn to before some officer entitled to administer**
5 **oaths.**

6 **4. That the defendant is named, or if his name is unknown, that he**
7 **is described by a fictitious name, with a statement that his true**
8 **name is to the grand jury, district attorney, or complainant, as the**
9 **case may be, unknown.**

10 **5. That the offense charged therein is triable in the court in which it**
11 **is filed, except in case of a complaint filed with a magistrate for**
12 **the purposes of a preliminary examination.**

13 **6. That the offense was committed at some time prior to the filing of**
14 **the accusatory pleading.**

15 **Only when an accusatory pleading, meeting the requirements of**
16 **Penal Code §950 and §952, for a criminal matter is presented to the**
17 **accused must he plead to it. The court may not enter a plea on the**
18 **Defendant's**
19 **behalf under Penal Code §1024 unless the accused has been**
20 **presented**
21 **with an accusatory pleading meeting the requirements of Penal**
22 **Code**
23 **§950 and §952. The notice to appear does not meet those**
24 **requirements,**
25 **thus the notice to appear is vague on its face and this court must**
sustain this demurrer and must dismiss the action against accused.

III

CONCLUSION

1 **8. Defendant has clearly shown that the notice to appear (citation)**
2 **is vague on its face, in that there is no:**

3 **a. Determination as to whether the action is civil or criminal.**

4 **b. Name of the plaintiff in the action.**

5 **c. Nature of the proceeding.**

6 **d. Signature of the District Attorney (if it is a criminal action).**

7
8 **Therefore, the citation is vague and not in conformance with the**
9 **requirements under CPC § 950, §952, and §959**

10 **9. For the reasons stated in this demurrer, the accused respectfully**
11 **requests this court to sustain this demurrer and dismiss the action**
12 **against the accused.**

13 **Signed: _____**

Date: _____

14 **Mr. Freeman, Accused, In**
15 **Propria Persona**