

# **In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**CUITLAHUAC TAHUA RIVERA,**

**Defendant and Appellant.**

**CAPITAL CASE**

Case No. S153881

Colusa County Superior Court Case No. CR46819

The Honorable S. William Abel, Judge

## **SUPPLEMENTAL RESPONDENT'S BRIEF**

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## TABLE OF CONTENTS

	<b>Page</b>
Introduction .....	4
Argument .....	4
The restitution fine and the parole revocation restitution fine must be reduced to the statutory maximum of \$10,000 .....	4
Conclusion .....	5

## TABLE OF AUTHORITIES

**Page**

### **CASES**

<i>People v. Blackburn</i> (1999) 72 Cal.App.4th 1520 .....	4, 5
--	------

### **STATUTES**

#### Penal Code

§ 1202.4.....	4
§ 1202.4, subd. (b) .....	4, 5
§ 1202.45.....	4, 5
§ 1202.45, subd. (a).....	4

## INTRODUCTION

In a supplemental opening brief, filed on February 11, 2019, appellant Rivera argues that the restitution fine imposed pursuant to Penal Code<sup>1</sup> section 1202.4, subdivision (b), and the parole revocation fine imposed pursuant to section 1202.45 were unauthorized because they exceeded the statutory maximum. (ASOB 4-5.) He claims that the fines must each be reduced to the statutory maximum of \$10,000. Respondent is constrained to agree.

## ARGUMENT

### **THE RESTITUTION FINE AND THE PAROLE REVOCATION RESTITUTION FINE MUST BE REDUCED TO THE STATUTORY MAXIMUM OF \$10,000**

The trial court imposed a restitution fine of \$23,600 pursuant to section 1202.4, subdivision (b). (49 CT 14004, 14008; 14 RT 3060.) The trial court also imposed a parole revocation restitution fine of \$23,600 pursuant to section 1202.45. (49 CT 14004, 14008; 14 RT 3060.) However, at all relevant time periods the statutory maximum in a case for a restitution fine pursuant to section 1202.4, subdivision (b), has been \$10,000. (§ 1202.4, subd. (b); see *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1534.) And, as currently set forth in section 1202.45, subdivision (a), the parole revocation restitution fine shall be assessed “in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4,” effectively setting a statutory maximum of \$10,000 for the parole revocation restitution fine as well. The statutory maximum is \$10,000 regardless of the number of victims or counts involved or the term of years imposed. (§ 1202.4, subd. (b); *People v. Blackburn, supra*, 72 Cal.App.4th

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

at p. 1534.) Therefore, Rivera's restitution fine and parole revocation restitution fine should be reduced to the statutory maximum of \$10,000. (*People v. Blackburn, supra*, 72 Cal.App.4th at p. 1534.)

### CONCLUSION

Accordingly, this Court should reduce the restitution fine pursuant to section 1202.4, subdivision (b), and the parole revocation restitution fine pursuant to section 1202.45 to \$10,000 each.

Dated: February 13, 2019

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that the attached **SUPPLEMENTAL RESPONDENT’S BRIEF** uses a 13 point Times New Roman font and contains 304 words.

Dated: February 13, 2019

XAVIER BECERRA  
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Case Name: *People v. Rivera*

No.:

**S153881**

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I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 13, 2019, at Sacramento, California.

L. Lozano  
\_\_\_\_\_  
Declarant

*/s/ L. Lozano*  
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Signature

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**STATE OF CALIFORNIA**  
 Supreme Court of California

**PROOF OF SERVICE**

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2/13/2019

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Date

/s/Darren Indermill

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Signature

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