

1 TIM WARD
TULARE COUNTY DISTRICT ATTORNEY
AMY I. MYERS, SBN: 269475
2 DEPUTY DISTRICT ATTORNEY
221 S. MOONEY BLVD RM 224
3 VISALIA, CA 93291
TELEPHONE: (559) 636-5494
4 FAX: (559) 730-2658

5 ATTORNEY FOR PLAINTIFF(S)

6 **TULARE COUNTY SUPERIOR COURT**

7 **STATE OF CALIFORNIA, VISALIA DIVISION**

8	PEOPLE OF THE STATE OF)	Case No. VCM401126
	CALIFORNIA,)	
9)	PEOPLE'S OPPOSITION TO
	Plaintiff,)	DEFENDANT'S DEMURRER TO
10	vs.)	COMPLAINT
)	
11	WILLIAM BURDEN,)	Date: December 16, 2020
)	Time: 8:30 a.m.
12	Defendant.)	Dept.: 3
13)	

14 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, by and through its
15 attorneys, TIM WARD, District Attorney, and AMY I. MYERS, Deputy District Attorney,
16 respectfully submit the following Points and Authorities in support of its Opposition to
17 Defendant's Demurrer to the Complaint.

18 **I. STATEMENT OF THE CASE**

19 On August 13, 2020, the People filed a misdemeanor complaint charging Defendant
20 with a single misdemeanor count as follows:

21 On or about January 20, 2020, in the County of Tulare, the crime of
22 ANNOYING TELEPHONE CALLS, in violation of PENAL CODE
SECTION 653M(a), a MISDEMEANOR, was committed by WILLIAM
23 JOSEPH BURDEN, who did unlawfully, and with intent to annoy, telephones
24 or makes contact by means of an electronic communication device with E.N.
and addresses to or about the other person any obscene language or addresses
25 to the other person any threat to inflict injury to E.N. or property of the person
addressed or any member of his or her family, is guilty of a misdemeanor.

1 Nothing in this subdivision shall apply to telephone calls or electronic contacts
2 made in good faith.

3 At the time of Defendant's arraignment, Defendant filed the instant Demurrer to the
4 Complaint to which the People hereby Oppose. Defendant's demurrer alleges (1) that the
5 offenses occurred outside the jurisdiction of the Court, and (2) that the Complaint does not
6 substantially conform to Penal Code §§ 950 and 952 requirements relating to a statement of the
7 offense.

8 **II. POINTS AND AUTHORITIES**

9 **1. DEFENDANT'S DEMURRERS ARE MERITLESS.**

10 Defendant demurs to the single misdemeanor count in which he is charged, alleging, (1)
11 that the offenses occurred outside the jurisdiction of the Court, and (2) that the Complaint does
12 not substantially conform to Penal Code §§ 950 and 952 requirements relating to a statement of
13 the offense. Both claims are meritless.

14 **A. DEMURRER ONLY TESTS ISSUES OF LAW ON THE FACE OF A 15 COMPLAINT.**

16 A demurrer is a pleading that raises an issue of law as to the sufficiency of the accusatory
17 pleading. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1090.) A demurrer tests only those
18 defects that appear on the face of the accusatory pleading. (Pen. Code, §§ 1002-1004; *People v.*
19 *Williams* (1979) 97 Cal.App.3d 382, 387-388.) Penal Code section 1004 establishes five
20 exclusive enumerated grounds upon which a demurrer may be brought. (*People v. McConnell*
21 (1890) 82 Cal. 620, 621; *People v. McAllister* (1929) 99 Cal.App. 37, 40, 44.) The claims raised
22 by Defendant's demurrer are included in Penal Code section 1004's permissible grounds. (Pen.
23 Code § 1004.)

24 The demurrer "must distinctly specify the grounds of objection to the accusatory pleading
25 or it must be disregarded." (Pen. Code, § 1005.) **It is well-settled that a demurrer is not a
proper means to test the sufficiency of evidence.** (*Tobe, supra*, 9 Cal.4th at p. 1090; *Williams*,

1 *supra*, 97 Cal.App.3d at p. 393; *Ratner v. Municipal Court* (1967) 256 Cal.App.2d 925.)

2 In ruling on a demurrer, it is *presumed* that all factual averments are true. “**The**
3 **defendant cannot strengthen his demurrer by bringing in evidentiary material which**
4 **discloses a defect in the (pleading).**...(*People v. Chaides* (2014) 229 Cal.App.4th 1157, 1163.)

5 The sole question raised by demurrer is whether the pleading is facially—not factually—
6 deficient. (*People v. Jimenez* (1993) 19 Cal.App.4th 1175, 1177, fn. 3, italics in original.)

7 B. DEFENDANT’S JURISDICTION CLAIM IS NOT PROPER

8 Defendant claims in his Demurrer that jurisdiction is improper because he was on a
9 “foreign-flagged vessel” (cruise ship) at the time the offense was committed. Despite the fact
10 that **Defendant is a resident of the state of California**, and despite the fact that **the crime was**
11 **committed upon a Tulare County resident in the State of California**, Defendant claims that
12 Bermuda has jurisdiction over this crime because “**the evidence will show**” that Defendant was
13 on a cruise ship in Bermuda when the emails were sent. The Demurrer argues, “**Perhaps, if**
14 **Defendant had committed the offenses within the geographic jurisdiction of the United**
15 **States, California’s long-arm statute might confer jurisdiction to the court.**”

16 First, **Defendant’s attempt to bring in evidentiary material to strengthen his**
17 **demurrer is impermissible and cannot be considered.** (*People v. Chaides* (2014) 229 Cal.
18 App.4th 1157, 1163, citing *People v. Jimenez* (1993) 19 Cal.App.4th 1175, 1177, fn. 3.) There
19 is no evidence before this Court to support Defendant’s claim that he was in Bermuda on the
20 date of this offense. However, even if it could be shown that Defendant was in fact on a cruise
21 ship at the time he committed this crime, his position that he is free to commit such internet
22 based crimes upon residents of Tulare County California so long as he is in the safety of those
23 foreign waters is ludicrous. This Court does not lose jurisdiction over crimes committed in this
24 County, by another California resident, simply because he committed his internet based crime
25 while on vacation.

1 **C. THE COMPLAINT SUBSTANTIALLY COMPLIES WITH THE RULES OF**
2 **PLEADING SET FORTH IN PENAL CODE SECTIONS 950 AND 952.**

3 Penal Code Sections 950 and 952 outline the rules in California governing accusatory
4 pleadings. Penal Code Section 950 states that an accusatory pleading must contain (1) the title of
5 the action, specifying the name of the court to which the same is presented, and the names of the
6 parties; and (2) A statement of the public offense or offenses charges therein.” (Pen. Code §
7 950.) Penal Code Section 952 governs the statement of the offense, stating:

8 In charging the offense, each count shall contain, and shall be sufficient if it
9 contains in substance, a statement that the accused has committed some public
10 offense therein specified. Such statement may be made in ordinary and concise
11 language without any technical averments or any allegations of matter not
12 essential to be proved. It may be in the words of enactment describing the
offense or declaring the matter to be a public offense, or in any words sufficient
to give the accused notice of the offense of which he is accused.

13 (Pen. Code § 952; *Byrd v. Municipal Court of City and County of San Francisco* (1981) 125 Cal.
14 App. 3d 1054.) The court in *Ratner v. Municipal Court* (1967) 256 Cal. App. 2d 925, 929, stated
15 that “The accusatory charge ‘may be in words of the enactment describing the offense or
16 declaring the matter to be a public offense. (Pen. Code § 952) This is undoubtedly the simplest,
17 and appears to be the most common, method of pleading; and the charge is sufficient even
18 though, by this method, it contains conclusions of law’ ... Also words used in a statute to define a
19 public offense need not be strictly pursued in the accusatory pleading, but other words conveying
20 the same meaning may be used.’ (Pen. Code § 958)

21 Here, the charging document alleges:

22 On or about January 20, 2020, in the County of Tulare, the crime of
23 ANNOYING TELEPHONE CALLS, in violation of PENAL CODE
24 SECTION 653M(a), a MISDEMEANOR, was committed by WILLIAM
25 JOSEPH BURDEN, who did unlawfully, and with intent to annoy, telephones
or makes contact by means of an electronic communication device with E.N.
and addresses to or about the other person any obscene language or addresses
to the other person any threat to inflict injury to E.N. or property of the person

1 addressed or any member of his or her family, is guilty of a misdemeanor.
2 Nothing in this subdivision shall apply to telephone calls or electronic contacts
3 made in good faith.

4 Defendant argues that the Count charged in the Complaint fails to substantially comply
5 with the pleading requirements above due to its "uncertainty" and claims that there are "so many
6 possible permutations that it is unfair amounting to a due process violation to allow the current
7 complaint to stand." Defendant's arguments are without merit and his contentions rely on an
8 incorrect interpretation of the notice-pleading requirements. Under Penal Code section 952, a
9 charge is sufficient if it be in any words sufficient to give the accused notice of the offense of
10 which he is accused. "A statement may be made in ordinary and concise language without any
11 technical averments or allegations of matter not essential to be proved. It may be in the words of
12 the enactment describing the offense or declaring the matter to be a public offense, or in any
13 words sufficient to give the accused notice of the offense of which he is accused." (*People v.*
14 *Ramirez* (2003) 1109 Cal.App.4th 992, 999; Pen. Code § 952.)

15 Thus, pursuant to Penal Code section 952, an offense is adequately charged if it states in
16 ordinary language that the accused has committed a specified public offense. (See *People v. De*
17 *La Roi* (1944) 23 Cal.2d 692, 697.) The charge may be stated in the language of the statute
18 declaring the conduct to be a crime; therefore, the allegation is sufficient if it uses the words of
19 the statute under which the offense is charged. (*People v. Pierce* (1939) 14 Cal.2d 639, 646.) Use
20 of the statutory language, however, is not mandatory. (Pen. Code § 958.) Courts have
21 specifically held that "Sections 951 and 952, providing that an offense may be charged in the
22 short form and without technical averments, does not deprive defendant of due process." (*People*
23 *v. Quinn* (1949) 94 Cal.App.2d 112, 116.)

24 Here, the count charged is stated in language that is nearly verbatim to the statutory
25 language and specifies a unique time span. (See Pen. Code § 653m(a).) This language explicitly
complies with notice requirements of Section 952 and is sufficient to charge the offense. (Pen.
Code, §§ 950, 952; *People v. Jennings* (1991) 53 Cal.3d 334, 358.)

1 **2. SHOULD THE COURT SUSTAIN THE DEMURER, THE PEOPLE ARE**
2 **ENTITLED TO CURE ANY DEFECT.**

3 In ruling on a demurrer to an accusatory pleading, the court must make an order either
4 overruling or sustaining the demurrer. If the court overrules the demurrer, the defendant must
5 immediately enter his plea. If the court sustains the demurrer and the defect can be remedied,
6 the court must permit the People to file an amended pleading within 10 days of the order
7 sustaining the demurrer. (Pen. Code § 1007.) “No accusatory pleading is insufficient, nor can
8 the trial, judgment, or other proceeding thereon be affected by reason of any defect or
9 imperfection in matter of form which does not prejudice a substantial right of the defendant
10 upon the merits.” (Pen. Code, § 960; *People v. Sandoval* (2006) 140 Cal.App.4th 111, 132.)


11 **III. CONCLUSION**

12
13 Based on the foregoing, the People respectfully request that this Court overrule
14 Defendant’s Demurrer to the Complaint in its entirety.

15
16 Dated: December 3, 2020

17 Respectfully submitted,

18 TIM WARD
19 DISTRICT ATTORNEY

20 
21 AMY I. MYERS
22 DEPUTY DISTRICT ATTORNEY

PROOF OF SERVICE

The undersigned declares:

My business address is 221 South Mooney Blvd, Visalia, California 93291. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within:

PEOPLE'S OPPOSITION TO DEFENDANT'S DEMURRER TO COMPLAINT

In the matter of: WILLIAM BURDEN

VCM401126

To be served on the following parties in the following manner:

PERSONAL SERVICE _____

MAIL _____

EMAIL _____


FAX X

INTEROFFICE MAIL _____

To: JOHN SARFIELD
(559) 732-3005

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 3, 2020, at Visalia, California.



Jazmin Soto
Legal Office Assistant II

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The undersigned declares:

My business address is 221 South Mooney Blvd, Visalia, California 93291. I am over the age of eighteen years and not a party to the within action.

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PERSONAL SERVICE _____ MAIL _____ EMAIL X
FAX _____ INTEROFFICE MAIL _____

To: JOHN SARFIELD
meloandsarsfield@icloud.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 3, 2020, at Visalia, California.



Jazmin Soto
Legal Office Assistant II