JOHN D. BARNETT, ESQ. (SBN 56509)
LAW OFFICE OF BARNETT & BARNETT
One City Boulevard West, Suite 500
Orange, California 92868
Telephone: (714) 634-3397
Fax: (714) 634-1769

Attorney for defendant Manuel Anthony Ramos

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COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. MANUEL ANTHONY RAMOS, JAY PATRICK CICINELLI, Defendants.	CASE NO. 11CF2575 REPLY OF DEFENDANT MANUEL ANTHONY RAMOS TO PEOPLE'S OPPOSITION TO MOTION TO SET ASIDE THE INFORMATION PURSUANT TO PENAL CODE SECTION 995 Hearing date: January 18, 2013 Time: 8:30 A.M. Department: C40

REPLY MEMORANDUM

SUMMARY OF REPLY

Contrary to the People's apparent position, the law on reasonable force by a peace officer, per the Fourth Amendment, is not governed by state law on self-defense. *Brown v. Ransweiler*, 171 Cal.App.4th 516, 526-528, 89 Cal.Rptr.3d 801 (2009) (". . . ' "[Police officers] are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, '. . . the defendant police officer is in the exercise of the privilege of protecting the public peace and order [and] he is entitled to the even greater use of force than might be in the same circumstances required for self-defense. . . .' [Citation.]"' . . ."); *Edson v. City of Anaheim*, 63 Cal.App.4th. 1269, 1273-1274, 74 Cal.Rptr.2d 614 (1998).

Virtually all of the cases cited by the People fall into one of two categories: (1) civil cases involving diverse facts, often evaluated to determine if the plaintiff can avoid summary judgment; and (2) cases concerned with whether a defendant in a criminal case involving assault on a peace officer was entitled to a jury instruction on excessive use of force as a defense. Some of the People's cases involve negligence in traffic accidents, and thus are not even concerned with the exercise of discretion. The People cite no relevant cases dealing with a police officer as a criminal defendant. The problem with this is shown in *People v. Adams*, 176 Cal.App.4th 946 (2009), cited at page 25 of the District Attorney's brief. In that case the Court discusses the PERCEPTION of a <u>detainee</u>, of a possible threat of excessive force. It deals with a detainee's potential right to resist. It does NOT deal with a peace officer's potential liability. In fact, it underscores the problem of using civil authorities in relation to criminal cases, except to say that if there was no civil liability there can be no criminal liability. Under *Adams* the citizen making the arrest and the arrestee could each have acted appropriately. Under the jury instruction approved in *Adams*, the detainee might respond in self-defense to a perceived threat of excessive force which did not in fact exist.

The contention at the top of page 5 of the People's Opposition (Opp.) that it was "readily apparent that Thomas suffered from some mental debility" is wholly without foundation in the record of the detention. Except for common accompaniments of homelessness, none of the indicators of mental illness listed in the POST Basic Course Workbooks in **Exhibit 3** (at LD 37, Chapter 4, pages 4-5 to 4-10) were apparent.

The District Attorney's case is based entirely on the false premise that the defendant made an unlawful threat of violence to the alleged victim, who then lawfully fled from that threat.

At length, when it came time to arrest the detainee later identified as Kelly Thomas, on probable cause for receiving stolen property, a possible felony, Officer Manuel Ramos, having observed clear signs of the subject's looming physical resistance to being taken into custody, told Thomas, in a calm voice, in his own idiom, that he would "f___" him with his fists if he did not "start listening". The threat was NOT unlawful. The apparent meaning of the threat was that if the detainee physically resisted arrest, he would be forcibly seized and taken into custody, and he could get hurt in the process. Officer Ramos had every right to give that admonition. The threat, which was expressly conditional upon future disobedience to police orders, was not objectively one that would be taken as a threat of actual impending unlawful violence. And Thomas did NOT take it as such, as his cavalier words "start punching dude" show that he was not apprehensive of imminent unlawful injury. Rather, Thomas, after being lightly grasped on the left upper arm twice, preparatory to arrest, stood up in Officer Ramos' face and then fled, to avoid going to jail, NOT to avoid an unlawful beating. The officers had the right to pursue and use reasonable force against Thomas when he ran. Penal Code section 835a. The officers were not required to desist, and indeed it was incumbent upon them to apply all necessary force to bring the subject under control. The District Attorney argues that when an arrestee <u>believes</u> the officer might use excessive force, the arrestee is entitled not only to flee but to use force against

the officer. The District Attorney's contention that in the circumstances of this case, Thomas was entitled to use deadly force against Officer Ramos, because Thomas was in reasonable fear that Officer Ramos would use deadly force, is absurd.

When the proper constitutional test is applied, Officer Ramos' "threat" to Thomas, on pain of his further failure to respond to orders, which did not import imminent injury to Thomas or accidental use of a weapon, was not unreasonable as a matter of law, and did not confer a right of self-defense on Thomas. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. . . ." *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). Officer Ramos had a right to presume that the responding law officers would fulfill their respective duties and follow the law. See *Connerly v. Schwarzenegger*, 146 Cal.App.4th 739, 751, 53 Cal.Rptr.3d 203 (2007); *Lezama v. Justice Court*, 190 Cal.App.3d 15, 235 Cal.Rptr. 238 (1987). Initially, Officer Ramos, grappling with Thomas, lost his baton at the hands of Thomas (**Exhibit 4** at 15:58, 16:08), and then Officer Ramos voiced his fear that Thomas would break his arm (**Exhibit 4** at 17:53). Thereafter, Ramos, at 19:11, repaired to the periphery of the struggle. Thomas variously complained that he could not breathe, but his continued strong voice and stalwart physical combativeness belied shortness of breath, and the officers had a right to rely on that, and the urgent need to bring him under control persisted. In *Gregory v. County of Maui*, 523 F.3d 1103,1107 & n.4 (9th Cir. 2009), the Ninth Circuit found it important that" Gregory was able to talk throughout the confrontation, and the estate presented no evidence rebutting the autopsy's conclusion that Gregory must have been able to breathe if he could talk." In the instant case, the county medical examiner Dr. Singhania endorsed a similar conclusion. RT 338:8-14; 339:8-22; 342:10 - 343:7. And in *Wagner v. Bay City*, 227 F.3d 316, 324 (5th Cir. 2000), the Court of Appeals, finding no

excessive force in the arrest of the subject, Gutierrez, commented: ". . . defendants did state that they heard him groaning during the trip to the police station and thus had reason to believe he was still breathing. . . ." Actions generally speak louder than words, and the officers herein, by their sworn duty, could not simply allow a violent and dangerous suspect to escape and run amok.

At 19:26 - 19:27 the video (**Ex. 4**) reflects that Thomas grabbed the end of Corporal Cicinelli's Taser, and that Cicinelli pulled it back, and then used his Taser as an impact device. The video shows clearly that Officer Ramos was looking down and to the side, toward Thomas' feet, when Corporal Cicinelli suddenly used the Taser as such, and Ramos did not see and could not forestall that use, or any cranial or facial injury at all. See **Exhibit 4** at 19:26 - 20:00. The officer's use of the Taser as an impact device was not foreseeable to a reasonable officer in the position of Officer Ramos, and Ramos had no reason to anticipate it, and no conceivable way to react in time to forestall it. See *Cunningham v. Gates*, 229 F.3d 1271, 1289-1290 (9th Cir. 2000) (". . . Importantly, however, officers can be held liable for failing to intercede only if they had an opportunity to intercede. . . ." See *Gaudreault v. Municipality of Salem*, 923 F.2d 203, 207 & n.3 (1st Cir. 1990) (". . . But Gaudreault's complaint says that the attack came quickly and was over in a matter of seconds. A police officer cannot be held liable for failing to intercede if he has no 'realistic opportunity' to prevent an attack. See *O'Neill v. Krzeminski*, 839 F.2d 9, 11-12 (2d Cir. 1988). That clearly was the case here.")

In the physical confrontation two and even three officers could not control Thomas. Thomas was not restrained by any device through approximately 22:52, and he continued to physically struggle through 21:46. See **Ex. 4** ("He's still fighting, dude" (21:46); "Let go of me" (21:09)).

I. OFFICER MANUEL RAMOS' WARNING TO KELLY THOMAS DOES NOT QUALIFY AS A PREDICATE "ACT" FOR IMPLIED-MALICE MURDER.

In Section A.1. - 2. at pages 17-36 of the Opposition, the District Attorney seeks to support his contention, stated in the first paragraph on page 30, that "defendant Ramos' threat may constitute the requisite 'act' in the commission of Thomas' murder." But the District Attorney employs an incorrect legal standard which leads to a spurious conclusion, that Thomas was legally empowered to strike Officer Ramos over the latter's deterrent admonition. But that position is flatly contrary to the teachings of *Graham*, *Edson*, *Brown v. Ransweiler*, and Penal Code section 835a. Instead of using the correct standard of a reasonable officer on the scene, the District Attorney uses what amounts to the would-be "standard" of the "reasonable" recalcitrant detainee. The glaring use of that ersatz standard is pervasive throughout the Opposition (*e.g.* at p. 28, lines 16-17). And the prosecutor ignores the fact that (1) the "threat" was conditioned by the words "if you don't ...start listening"; (2) it had a perfectly legal common-sense interpretation, couched in the streetwise vernacular of Kelly Thomas himself (already replete with use of the "f" word), in an obvious effort to communicate with Thomas; (3) Thomas' calm intonation of the words "start punching Dude" showed that he responded to the "threat" with equanimity; (4) the "threat" was followed up by two fleeting efforts by Officer Ramos (which Thomas obstinately resisted) to take hold of Thomas' arm to induce Thomas to place his hands on his knees as directed, and those efforts were what prompted Thomas to stand up; and (5) it was only after Thomas abruptly stood up and placed his arms in Officer Ramos' face that Officer Ramos, as he was obliged to, pulled out his baton and held it in abeyance, until after Officer Wolfe had advanced and swatted Thomas on the leg, as Thomas fled in front of the adjacent parked police car. At the time that the "threat" was uttered, there was ample probable cause to believe that Thomas was guilty of receiving stolen property, a possible felony. In the

early part of the stop and detention, the subject had declined to cooperate in identifying himself. In his backpack, apparently stolen mail was found. (**Exhibit 4** at 13:28 - 14:32; **Exhibit 5** at pages 11-12.) Though demonstrably able to obey orders, the subject pervasively refused to do so. Thomas was clearly on notice that he was going to be arrested. (**People's Exhibit 5**, page 7 ("I'm going to take you to jail for suspicion of burglary" (Ramos)); page 8.) And the subject made it abundantly clear that he was going to resist being taken into custody. **Exhibit 4**, at 4:16 - 5:24; 14:36 - 55; 15:03 - 20. The use of the latex gloves, as the prosecution is aware, is ubiquitous in police work and was merely standard operating procedure for an arrest. See, *e.g.*, **Exhibit 4** at 19:47. Officer Ramos had just been handed the gloves by Officer Wolfe, for use in an arrest. (**Ex. 4**, at 7:11.)

The putative "threat" was reasonable under *Graham* because it was in fact neither forceful nor violent and it was reasonably calculated, from the perspective of a reasonable officer on the scene, to gain the attention and compliance of the detainee. The use of the "f' word, an amorphous colloquialism, simply informed Thomas in his own street language that he would experience forceful treatment if he refused to submit. Officer Ramos, at the time, had every right to make that representation in seeking to induce compliance. The "threat" had a perfectly plausible and unexceptionable meaning under the circumstances, even though, like any admonition from a police officer to compel obedience, it was phrased (lest it have no effect) to give pause to a person contemplating further defiance. The warning by Officer Ramos to Thomas that Ramos' fists would "f___" him up if he did not start listening was not a predicate act for second degree murder on a theory of implied malice. It was constitutionally justifiable. Officer Ramos was not required to desist in the face of resistance (Penal Code section 835a), and he properly recognized that cooperation by Thomas would be preferable to a forcible arrest. There is no evidence that Officer Ramos, in making the so-called "threat" to Kelly Thomas,

had any prescience that his words and/or actions posed any danger to human life. On the contrary, it was reasonable for Ramos to believe that his "threat" would prevent violence. The District Attorney argued at RT 410:7-8 that the detainee was a man of "obvious mental deficiencies". However, on the record in the instant case there is no material evidence that any of the officers were on notice or should have been aware that the detainee was mentally ill or mentally disabled or impaired within the general time frame of the events in question, and the magistrate never made any finding of any mental illness or mental disability, or any appearance of such. In *McKenney v. Harrison*, 635 F.3d 354, 360 (8th Cir. 2011), the Court of Appeals declared: ". . . That Barnes did not say anything in response to Harrison's orders or ask the officers any questions did not place the officers on notice of a mental disability." There is simply no evidence in the instant record that Officer Manuel Ramos engaged in conduct which he knew or should have known was dangerous to human life. There is no rational basis for the murder or the manslaughter charge, predicated upon a "threat".

A peace officer's plausible but ambiguous threat which is merely conditional upon failure to submit to authority does not confer a right of self-defense upon a detainee. Because such a threat is equivocal and because it is contingent upon future noncompliance with law enforcement directions, it does not portend "imminent" force, within the meaning of the law on self-defense. Thus the statement of Officer Ramos that his fists were getting ready to f___ up Thomas if he did not "start listening" did not give Thomas the right to strike or apply force to Officer Ramos. No case cited by the People compels a contrary conclusion. See, *e.g.*, *People v. Adams*, 176 Cal.App.4th 946, 949, 98 Cal.Rptr.3d 383 (2009) (cited in Opp. at 24-26) (re citizen's arrest). Thus cloaking a person such as Kelly Thomas with a right to strike Officer Ramos based upon a conditional "threat" if he did not "start listening", when Officer Ramos was not laying a hand on Thomas and was merely trying to gain a measure of compliance, would have been roundly

disapproved by the Court in *People v. Curtis*, 70 Cal.2d 347, 74 Cal.Rptr. 713, 450 P.2d 33 (1969), cited in the Opposition. There is no rational basis for concluding that Thomas was in reasonable apprehension of the imminent use of excessive force. Thomas had been noncompliant from the beginning, and Officer Ramos had demonstrated exemplary patience. The warning of Officer Ramos to Thomas was expressly conditioned on noncompliance with police orders ("If you don't f___ing start listening." (**Exhibit 5**, page 13.)). Officer Ramos' admonition regarding his fists was conditional and nonviolent and for the sole purpose of inducing Thomas to obey orders and submit to a posture where he could be taken into custody, in accordance with Officer Ramos' sworn duty as a peace officer. An illuminating comparison is afforded by *Colston v. Barnhart*, 130 F.3d 96 (5th Cir. 1997), *rehearing en banc denied* July 14, 1998 (146 F.3d 282), *cert. denied* 525 U.S. 1054, 119 S.Ct. 618 (Dec. 14, 1998), wherein two police officers in a traffic stop for a defective headlight confronted a passenger who was variably uncooperative. The passenger, Colston, who gave fictitious names, was directed to get on the ground, and he "got on all fours, but then lifted one leg up." 130 F.3d at 98. The two officers, Barnhart and Langford, repeatedly ordered Colston to get on the ground, but he refused to do so and began to stand up. Then: "Both officers pushed Colston in an attempt to prevent him from standing up". *Id.* But "Colston resisted their efforts and forced his way to his feet." *Id.* At that point, "Barnhart began striking Colston with his baton, and Langford tried to grab Colston." An altercation ensued, in which Barnhart and Colston found themselves on the ground. Barnhart drew his gun and fired at Colston, but missed. *Id.* Then Colston turned, stepped over Barnhart's outstretched legs, and took about two steps toward Barnhart's patrol car. Barnhart fired his gun twice, hitting Colston in the back of his right arm and in his buttocks. Colston filed a 42 U.S.C. Section 1983 action, alleging, *inter alia*, excessive force by Officer Barnhart under the Fourth Amendment. The Court of Appeals held that Officer Barnhart's use

of force was objectively reasonable under clearly established law. *Id.* at 100. But striking the unarmed and merely partially noncompliant Colston with the officer's baton was decidedly at a more forceful level than the nebulous and conditional threat by Officer Ramos, verbal and demonstrative only, to use his fists on Thomas if he did not "start listening". And when a gun is drawn there is always the grave peril of death or serious injury from accidental discharge. But hands are much slower and more benign. No officer in the instant case ever drew or threatened use of a gun. *A fortiori*, the holding of *Colston v. Barnhart* imports that the putative threat by Officer Ramos was not excessive force, and did not cloak Thomas with a right of self-defense.

In *Miller v. Lewis*, 381 F.Supp.2d 773 (N.D.Ill. 2005), a casino patron, Miller, filed an action under 42 U.S.C. Section 1983 for alleged civil rights violations during a confrontation when he was accosted by a security officer who was a special agent of the Illinois Gaming Board, over a reported gambling debt. The agent, Lewis, in the company of a security supervisor followed Miller in the corridor, and the supervisor told Miller that he owed the casino $500.00. Miller denied the overpayment and turned and walked away. At that point Lewis put his right hand on Miller's left upper arm, and they were briefly in contact for a matter of seconds, until, as Miller said, "Get your f___ing hands off of me right now", they disengaged. Miller then assumed a "defensive stance", "with his arms and hands raised toward Lewis". *Id.* at 779. Then: "As Miller disengaged from Lewis and got into his stance, Lewis drew his firearm, unlocking the safety as he did so, and pointed it at Miller. . . . Lewis did not observe any weapons on Miller before drawing his firearm." *Id.* On those facts, the District Court granted summary judgment for the defendant Lewis, declaring, at 785: "The Court finds that under the circumstances, Lewis's actions did not constitute excessive force." As to the interlude in which Lewis put his hand on Miller's arm, the District Court, at 785, declared: "The Court finds that the alleged momentary, if uncomfortable, use of force was not excessive under the totality of the circum-

stances."

In *Miller v. Lewis*, a gun was drawn by the officer, replete with the inevitable risk, in a tense situation, that the gun might discharge inadvertently. In the case at bar, of course, no gun was used, but only an instantaneous showing of fists. There is no risk that hands and fists might spin out of control accidentally. The conduct of Officer Ramos was at a level that was far more benign than the conduct of Agent Miller. The prosecution, not surprisingly, has failed to come up with even a single authority that a law enforcement officer's admonition, to a street-smart and recalcitrant detainee, in the detainee's own vernacular, that he will "f___" the subject with his fists if he does not "start listening" and comply with orders, is a predicate "act" for second degree murder or manslaughter. The prosecution has advanced no case example even remotely comparable with the admonition of Officer Ramos to Kelly Thomas.

In *McNeil v. Anderson*, 258 Fed.Appx. 205, 208, 2007 U.S.App.LEXIS 28464 (Dec.7, 2007), a state trooper stopped a motorist for speeding, and noticed items associated with meth manufacture, and recognized him as previously arrested for assaulting a police officer. When the motorist said he was getting a cell phone from his pants, the trooper said he would kill him if he retrieved anything else. Later, after a scuffle, the trooper retrieved his shotgun and threatened to kill the motorist if he did not lie down in the ditch. The Court found the trooper's conduct reasonable.

II. THERE WAS NO MURDER OR MANSLAUGHTER BY ANY AFFIRMATIVE ACT OR OMISSION ATTRIBUTABLE TO MANUEL RAMOS.

At no time in the video is there evidence of Officer Ramos hitting, striking or tasing Kelly Thomas or administering mechanical chest compression of him. At no time is there evidence of Officer Ramos engaging in any act inherently dangerous to human life, knowingly or otherwise. But Thomas bit Officer Ramos in the leg. (**Ex. 5**, at page 30.) Officer Ramos was unaware of

Thomas' enlarged heart. Officer Ramos' conduct in attempting to subdue and secure Thomas was objectively reasonable, per *Tofano v. Reidel*, 61 F.Supp.2d 289, 303 (D.N.J. 1999), and *Bornstad v. Honey Brook Township*, 211 Fed.Appx. 118, 122-124 (3d Cir. 2007) (no excessive force in "compression asphyxia" death of belligerent suspect in domestic violence (biting) matter). In the instant case, unlike *Drummond v. City of Anaheim*, and unlike *Champion v. Nashville Outlook, Inc.*, 380 F.3d 893, 898 (6th Cir. 2004), there was no clear evidence of mechanical chest compression for any sustained period. See the video in **Exhibit 4**.

III. THE INSTANT PROSECUTION IS PRECLUDED BY DUE PROCESS OF LAW BECAUSE THE EVIDENCE DOES NOT SHOW VIOLATIONS OF RIGHTS OF THOMAS THAT WERE CLEARLY ESTABLISHED AT THE TIME IN QUESTION.

In *Bouie v. City of Columbia*, 378 U.S. 347, 351, 84 S.Ct. 1697 (1964), the Supreme Court affirmed the principle of the Due Process Clause that: "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. *Lanzetta v. New Jersey*, 306 U.S. 451, 453."

Qualified immunity, also known as good faith immunity, is clearly delineated in *Hope v. Pelzer*, 536 U.S. 730, 739-740, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002), as follows:

> "As we have explained, qualified immunity operates 'to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.' *Saucier v. Katz*, 533 U.S. at 206. For a constitutional right to be clearly established, its contours 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. . . .
>
> "Officers sued in a civil action for damages under 42 U.S.C. Section 1983 have the same right to fair notice as do defendants charged with the criminal offense defined in 18 U.S.C. Sec. 242. . . ."

The charges in the instant case are predicated upon alleged unreasonable seizure of Kelly Thomas under color of law, in violation of the Fourth and Fourteenth Amendments. Cases in which qualified immunity obtained demonstrate that the circumstances of the instant case did not afford to the defendant Officer Ramos fair notice that his conduct violated 18 U.S.C. Section

242, or the statutes alleged in the within counts. Cases on state civil tort liability are irrelevant.[1]

O'Shea v. Littleton, 414 U.S. 488, 503 (1974), which predates the development of qualified immunity, and which provides that "official immunity does not reach 'so far as to immunize criminal conduct proscribed by an Act of Congress'", does not affect the due process requirement, not satisfied here, that the delineation of "criminal conduct" give fair notice of what is forbidden.

Respectfully submitted,

LAW OFFICE OF BARNETT & BARNETT

DATED: DECEMBER 28, 2012 John D. Barnett, by Albert A. Newton, SBN 92972

JOHN D. BARNETT

Attorney for defendant Manuel Ramos

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[1] *Mendoza v. City of West Covina*, 206 Cal.App.4th 702 (May 8, 2012), cited in the Opposition at pages 100-101, is inapposite here because (1) the *Mendoza* opinion is itself too late to have afforded any notice to Officer Ramos; (2) Mendoza was in a hospital emergency room for alcohol withdrawal sickness, and disclosed to the officer (Macias) various health problems (stomach pains, hearing voices, diabetes and high blood pressure); (3) the appellants' presentation of the evidence was one-sided and omitted recital of Taser log evidence that the Taser "had been discharged 14 times for as long as 30 seconds" (*id.* at 714); (4) witness testimony reflected that "Mendoza was not struggling with Macias, swinging the chair to which he was handcuffed, or otherwise resistant", but "completely subdued, crying out in pain, and moving only as an involuntary response to being repeatedly punched and 'Tasered'", as he was pinned down, before he stopped breathing and succumbed; and (5) the *Mendoza* opinion found that the officer conduct therein was not covered by qualified immunity, because, "numerous federal court decisions made it clear before 2007 that using various types of force, including Tasers, on a compliant, non resistant suspect violated clearly established constitutional rights. . . ." *Id.* at 716.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, hereby declare as follows:

I am over the age of eighteen (18) years, I am employed in the County of Orange, and I am not a party to the within action. My business address is: One City Boulevard West, Suite 500, Orange, California 92868.

On December 28, 2012, I served the attached document entitled

REPLY OF DEFENDANT MANUEL ANTHONY RAMOS TO PEOPLE'S OPPOSITION TO MOTION TO SET ASIDE THE INFORMATION PURSUANT TO PENAL CODE SECTION 995

on the interested parties in the within case of *The People of the State of California vs. Manuel Anthony Ramos and Jay Patrick Cicinelli,* Case No. 11CF2575 in the Orange County Superior Court (Central Justice Center), by placing a true copy of the said document in a sealed envelope, addressed as follows, and delivering the same by hand to the following addressee office:

Tony Rackauckas, District Attorney
Keith Bogardus, Deputy District Attorney
Orange County District Attorney's Office
401 Civic Center Drive West
Santa Ana, California 92701

I thus served the said document by hand-delivery this 28th day of December, 2012, at Santa Ana, California.

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

Executed this 28th day of December, 2012, at Orange, California.

MASIH KAZEROUNI

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, hereby declare as follows:

I am over the age of eighteen (18) years, I am employed in the County of Orange, and I am not a party to the within action. My business address is: One City Boulevard West, Suite 500, Orange, California 92868.

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on the interested parties in the within case of *The People of the State of California vs. Manuel Anthony Ramos and Jay Patrick Cicinelli*, Case No. 11CF2575 in the Orange County Superior Court (Central Justice Center), by placing a true copy of the said document in a sealed envelope, with postage thereon fully prepaid, First Class Mail or Priority Mail, and depositing the same in the United States Mail at Orange, California, addressed as follows:

Michael D. Schwartz, Esq. Lackie, Dammeier & McGill 367 No. Second Avenue Upland, California 91786	(Attorney for co-defendant Jay Patrick Cicinelli)

And I also served the above document this December 28, 2012, by e-mail, at schwartz@policeattorney.com and at kasey@policeattorney.com.

I thus served the said motion by mail and e-mail this 28th day of December, 2012, at Orange, California.

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

Executed this 28th day of December, 2012, at Orange, California.

LUISA CHAVEZ