LAW OFFICES OF SIRI SHETTY
PMB 421
415 LAUREL STREET,
SAN DIEGO, CA 92101

Tel: (619) 810-7625
Fax: (619) 955-6954
shetty208812@gmail.com

April 7, 2014

Frank A. McGuire
Court Administrator and Clerk
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *People v. Reynaldo Junior Eid et. al.*
California Supreme Court, Case No. S211702
Fourth Appellate District, Division Three, Case No. G046129
Orange County Superior Court, Case No. 05HF2101

Dear Mr. McGuire:

On March 19, 2014, this Court invited the parties to serve and file simultaneous letter briefs on or before April 1, 2014, and simultaneous reply letter briefs on or before April 7, 2014, addressing the significance, if any, of *People v. Solis* (2014) 224 Cal.App.4th 549 to the instant case. On March 28, 2014 appellants Eid and Oliveira submitted a joint letter brief. On that same date, the Attorney General submitted its letter brief (hereinafter "RLB").

Appellants's joint reply letter brief follows.

ARGUMENT

I. Consistent with Penal Code Section 1159, Relevant Precedent From This Court, and Sound Public Policy, *People v. Solis* Persuasively Holds that a Defendant May Not Sustain More than One Conviction For a Single Charged Crime[1]

As *Solis* recognizes, neither section 1159, caselaw, nor public policy supports

[1]All further statutory references will be to the Penal Code, unless otherwise noted.

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respondent's contention that the number of convictions may exceed the number of charges. Indeed, the rule endorsed by respondent would announce an unexpected departure from common understanding and practice. It also is inconsistent with *People v. Navarro* (2007) 40 Cal.4th 668, and implicates a defendant's right to notice of the number of convictions he may sustain. Finally, as *Solis* illustrates, respondent's position would lead to absurd consequences, such as a defendant sustaining two strike convictions where only one was charged. In short, contrary to respondent's claim, *Solis* underscores the soundness of permitting only one conviction for each charged crime, and thus, supports the decision of the Court of Appeal in the present case.

A. *Navarro* supports the one for one rule adopted by *Solis* and the Court of Appeal in the present case

In holding that section 1159 does not permit multiple convictions for uncharged lesser offenses based on a single charged crime, *People v. Solis, supra,* declined, as the Court of Appeal did here, to interpret "any offense" under that statute to include "any offenses." (*Id.* at pp. 556-557.) Rather, citing *People v. Navarro* (2007) 40 Cal.4th 668, the *Solis* court concluded that the singular language did not include the plural, notwithstanding the contrary admonition provided under section 7. (See *ibid.*)

In relying upon *Navarro* to reach such conclusion, neither *Solis* nor the Court of Appeal in the instant case erred. (RLB 3.) "Although *Navarro* did not arise in the same procedural context as Solis's . . . case [or the instant case], much of *Navarro's* reasoning may be applied to the multiple conviction issues raised here." (*Solis*, 225 Cal.App.4th at p. 556.) For example, *Navarro* likewise involved an issue of statutory interpretation: whether sections 1181, subdivision 6 and 1260, which were phrased in the singular, permitted a judge to modify a judgment to reflect two lesser included offenses upon finding the evidence insufficient to support the single charged offense. (*Navarro, supra*, 40 Cal.4th 668.) Based in part on the historical application and understanding of such statutes as only permitting a one for one modification, this Court declined to apply section 7 to read the singular language to include the plural, observing that "[g]eneral terms should be so limited in their application as not to lead to injustice or oppression or an absurd consequence." (*Id.* at p. 680.)

As *Solis* concluded, although *Navarro* involved the interpretation of different

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Fax: (619) 955-6954
shetty208812@gmail.com

statutes, "its 'one-for-one' analysis makes equal sense here." (*Solis, supra*, 224 Cal.App. 4th at p. 560.) As with the statutes at issue in *Navarro*, "[n]o case has interpreted [section 1159] to allow convictions of multiple lesser offenses to result from one charged offense." (*Solis, supra*, 224 Cal.App. at pp. 556-557.) And "the statutory scheme does not disclose any legislative intent to allow two convictions to result from one charged offense[.]" (*Id.* at p. 557.) In addition, although a defendant may consent to the jury's consideration of lesser related offenses, that does not necessarily include consent to "being convicted of two separate offenses stemming from one greater, especially given that common practice has never anticipated such a result." (*Id.* at p. 559.) Thus, where neither caselaw nor historical practice supported such interpretation, *Solis* held that section 1159 did not authorize more than one uncharged conviction for a single charged crime. (*Id.* at pp. 556-559.)

That *Solis* also found *Navarro* persuasive in reaching this conclusion further underscores that the Court of Appeal in the present case properly relied on that decision. Although respondent asserts that *Solis* merely presents "another example where a reviewing court wrongly extrapolated" from *Navarro* (RLB 2), it offers no persuasive reason to justify permitting "a jury to do what the judge may not, i.e.,to conclude that the evidence does not sustain a conviction on the greater offense, but then to convict on more than one lesser included offense." (Oliveira ABOM 12, quoting Slip. Op. at p. 12.) As appellants observed (Oliveira ABOM 12), although a jury's guilty verdict on a greater charged offense necessarily implies that it returned convictions on *all* uncharged included offenses, *Navarro* nevertheless recognizes that permitting a judge to modify such judgment to reflect more than one conviction would amount to a significant "departure in our criminal jurisprudence and an even more startling innovation." (*Navarro, supra*, 40 Cal.4th at p. 680, quotations and citations omitted.) Thus, regardless of whether it is imposed by a judge or found by a jury, a judgment reflecting two lesser convictions arising from one charged crime must be deemed unauthorized.

In short, *Navarro* remains apposite, and supports the interpretation of section 1159 adopted by *Solis* and the Court of Appeal in the instant case.

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B. As recognized by *Solis*, a one for one rule protects a defendant's right to notice of the number of convictions he may sustain

In holding that section 1159 does not allow the number of convictions to exceed the number of charges, *Solis* observed that "[t]he ramifications of allowing two convictions to stem from one are also significant." (*Solis, supra,* 224 Cal. App.4th at p. 559.) For example, in that case, the defendant sustained two strike convictions where he only had been charged with one. (*Id.* at p. 559.) As the appellate court stated, "a defendant who suffers two uncharged strike convictions from a single count, as opposed to only a single charged strike offense, faces significantly different potential consequences in future criminal prosecutions." (*Id.* at p. 559.) Indeed, "[t]he impact upon a future conviction is momentous — a second strike offender may face a doubled sentence, while a third strike offender faces a potential life sentence." (*Ibid.*)

In recognizing that two strike convictions arising from a single charged crime may negatively impact a defendant in future criminal proceedings, *Solis* did not, as respondent contends (RLB 4-5), contravene this Court's decision in *People v. Sloan* (2007) 42 Cal.4th 110. In *Sloan*, the defendant was charged with various convictions and enhancements arising from a domestic violence incident, including corporal injury on a spouse, with a prior conviction for the same offense (§ 273.5, subd. (e)(1)), assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)), and battery with serious bodily injury (§ 243, subd. (d)), as well as enhancements on those offenses for great bodily injury. On appeal, the defendant argued that the assault and battery crimes became lesser included offenses of the corporal injury offense as a result of the great bodily injury enhancement found true as to the latter crime. Thus, he asserted that the judicially created rule against necessarily included offenses remained applicable, and required vacatur of the assault and battery convictions. (*Id.* at p. 115.)

The Court of Appeal agreed, holding that it was appropriate to consider enhancements in determining whether a particular offense implicated the rule prohibiting conviction of both a greater and lesser crime. (*Sloan, supra,* 42 Cal.4th at p. 115.) It "also found that an additional factor — the potential for future multiple punishment — . . . . , further supported its conclusion that the convictions . . . . must be vacated under the multiple conviction rule." (*Id.* at p. 120.) Although the trial court had stayed the sentences under section 654, that appellate court observed that the defendant nevertheless

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Fax: (619) 955-6954
shetty208812@gmail.com

faced serious consequences in a future prosecution because the serious bodily injury enhancements had transformed those crimes into strikes. (*Ibid.*)

This Court reversed, holding that the Court of Appeal had erred in expanding the multiple conviction rule to require consideration of enhancements. This Court reiterated that the judicially created exception only compelled vacatur of those offenses deemed included offenses under the statutory elements test. (*People v. Sloan, supra*, 42 Cal.4th at p. 118.) After noting that section 954 otherwise permitted multiple convictions under the circumstances of that case, this Court reasoned that it would be irrational to prohibit multiple convictions otherwise permitted under that statute simply because additional enhancements also were charged and found true. (*Id.* at p. 119.)

In concluding that enhancements should not be considered, this Court also observed that the possibility of future multiple punishment could not provide a basis to otherwise disregard the mandate of section 954. (*People v. Sloan, supra*, 42 Cal.4th at p.122.) Nor could such possibility "itself furnish a basis for expanding the multiple conviction rule or undercutting the bright-line test . . . . [previously established for that exception.]" (*Id.* at p. 120.)

But *Sloan* has no application to *Solis* or the present case. Appellants do not dispute that section 954 permits multiple convictions for lesser offenses where such offenses are charged. (Eid RBOM 9; Oliveira RBOM 17-18). And neither *Solis* nor appellants' claims implicate the judicially created rule against necessarily included convictions. Indeed, appellants acknowledged that the misdemeanor false imprisonment conviction was not included within the attempted extortion conviction. (Eid RBOM 6.) And *Solis* observed that its facts did not implicate the rule prohibiting conviction of both a greater and lesser offense because one lesser offense was not included in the other. (*Solis, supra*, 224 Cal. App.4th. at pp. 557-558.)

But *Solis* recognized that California's statutory scheme does not reflect legislative intent to permit multiple *uncharged* convictions stemming from a single charged crime, and held that section 1159 does not authorize such a result. (*Solis, supra,* 224 Cal. App.4th. at pp. 556-559.) In so concluding, the appellate court did not premise its interpretation of the statute on the potential for future multiple punishment. Rather, it recognized that such consequences highlighted the unfairness of permitting two

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convictions for a single charged crime where a defendant had not received notice of, nor consented to, such a result. Indeed, the *Solis* court made clear that "the strike punishment consequences of [the defendant's] multiple convictions are not [its] sole concern." (*Id.* at p. 559.)

Rather, *Solis* emphasized that a defendant has "the right to know that he faced the potential of being convicted of two separate, uncharged lesser related offenses, both potential strikes, when charged with only one offense." (*Solis, supra*, 224 Cal.App.4th at p. 559.) And the result in that case was "unjust" because that defendant "had no reason to expect that he could suffer two strike convictions when charged with only a single strike offense." (*Ibid.*) Section 1159 does not, as *Solis* recognized, "authorize such an unexpected outcome." (*Ibid.*) Furthermore, a contrary rule may implicate "whether a defendant has a constitutional due process right to notice of the number of potential convictions he or she may face based on a single charged offense." (*Ibid.* at p. 560.)

Although appellants in the present case did not sustain two uncharged strike offenses for a single charged strike crime, *Solis*'s concern regarding notice remains relevant. As appellants argued, although they may have agreed to lesser included instructions on several offenses, they did not consent to multiple convictions for a single charge (Appellants' Letter Brief at p. 3), and did not have notice of such "an unexpected outcome." (*Solis, supra,* 224 Cal.App.4th at p. 559.) Indeed, as in *Solis*, the decision of the Court of Appeal to strike the misdemeanor conviction preserved appellants' due process right to notice of the number of convictions they could sustain based on a single charged crime.

C. *Solis* highlights the absurd consequences of the rule proposed by the Attorney General

As *Solis* recognized, respondent's interpretation of section 1159 could lead to unjust consequences. For example, as in *Solis,* it would allow a defendant to sustain two strike convictions when he only has been charged with one. (*Solis, supra*, 224 Cal.App.4th at p. 560.) Such result is manifestly unfair. (See *ibid.*)

In addition, although *Solis* did not involve such circumstance, the rule endorsed by the Attorney General might also permit a defendant to sustain punishment on two

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uncharged lesser offenses that may exceed the statutory maximum available for the greater charged crime. For example, a defendant charged with attempted murder absent an allegation of premeditation (§§ 664/187) faces a maximum term of 9 years. (See *People v. Jefferson* (1999) 21 Cal.4th 86, 97.) But such defendant could receive 12 years imprisonment if he was acquitted of that crime, but nevertheless convicted of two uncharged lesser related offenses such as mayhem (§ 204 – two, four or eight years) and aggravated assault (§ 245, subd. (a)(1) – two, three or four years.) Such result, as respondent cannot reasonably dispute, also is manifestly unfair.

Although neither circumstance occurred in the instant case, the rule urged by the Attorney General would endorse such an outcome in other cases. Thus, as recognized by *Solis* as well as the Court of Appeal in the instant case, respondent's interpretation of section 1159 not only is inconsistent with the plain terms of the statute, it is neither sensible nor in accord with sound public policy.

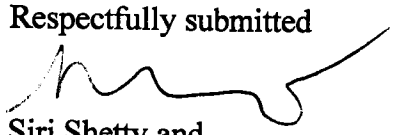
CONCLUSION

In sum, *Solis* persuasively supports the Court of Appeal's decision in the instant case. As *Solis* recognizes, section 1159 does not allow a defendant to sustain multiple uncharged lesser offenses for a single charged crime. Such rule is consistent with the statute's plain terms and its historical application. It also protects a defendant's due process right to notice of the number of convictions he may sustain.

Accordingly, this Court should affirm the judgment of the Court of Appeal and hold that section 1159 does not permit more than one conviction for each charged crime.

Dated: April 7, 2014

Respectfully submitted



Siri Shetty and
Richard Jay Moller
Attorneys for Appellants

LAW OFFICES OF SIRI SHETTY
PMB 421
415 LAUREL STREET,
SAN DIEGO, CA 92101

Tel: (619) 810-7625
Fax: (619) 955-6954
shetty208812@gmail.com

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: *People v. Eid et. al.* Case No. S211702

I, Siri Shetty, declare as follows:

1. I am over 18 years old, a resident of San Diego, California, not a party to this action, and my business address is PMB 421, 415 Laurel Street, San Diego CA 92101;

2. I served the within reply letter brief, by:
(a) causing to be served electronically through the court's e-submission portal; and
(b) by delivering *an original and eight copies* to:
California Supreme Court, Office of the Clerk, 350 McAllister Street, San Francisco CA 94102-4797; and

3. I served the within electronically to: California Attorney General, at ADIEService@doi.ca.gov; Appellate Defenders, at eservice-criminal@adi-sandiego.com; co-appellant counsel Richard Jay Moller at moller95628@gmail.com; and

4. I served the within on the following by causing to be mailed a copy thereof to:

Orange County District Attorney's Office 401 Civic Center Drive West Santa Ana, CA 92701	Orange County Superior Court 700 Civic Center Dr. West Department C-39 Santa Ana, CA 92701 For delivery to: The Honorable M. Marc Kelly
Court of Appeal, Fourth Appellate District, Div. Three 601 W. Santa Ana Blvd. Santa Ana, CA 92701	Reynaldo Junior Eid 562 Devon Street #1 Kearny, New Jersey 07032

I certify under penalty of perjury that the foregoing is true and correct.
Dated: April 7, 2014

Siri Shetty