IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JAMES RICHARD JOHNSON Petitioner and Appellant, *v.* ***CALIFORNIA DEPARTMENT OF JUSTICE*** Respondent; ***THE PEOPLE OF THE STATE OF CALIFORNIA*** Real Party in Interest and Respondent.	**Case No. S209167** Court of Appeal Case No. E055194 (4th Dist., Div. 2) San Bernardino County Superior Court Case No. CIVDS1105422

SUPPLEMENTAL LETTER BRIEF

After decision of the Fourth District Court of Appeal, Division Two

After Appeal from the Superior Court of San Bernardino County,
The Honorable David Cohn, Judge, Presiding

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January 6, 2014

Honorable Tani Gorre Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California, 94102-4797

Re: Supplemental Letter Brief
James Richard Johnson, Petitioner and Appellant v. California Department of Justice, Respondent; The People of the State of California, Real Party in Interest and Respondent.
S209167; E055194; CIVDS1105422

Dear Honorable Chief Justice Cantil-Sakauye and Associate Justices:

The Court has inquired whether *People v. Hofsheier* (2006) 37 Cal.4th 1185 (*Hofsheier*) should be overruled, with six subsidiary questions, and has requested supplemental letter briefs on the issue.

Hofsheier needs to be clarified or overruled. Although the facts of the *Hofsheier* case itself are simple, the lower courts have struggled when applying its holding to other sexual offenses; their efforts have occasionally produced strange results.

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I. ***Hofsheier* Should Be Clarified or Overruled**

The facts of *Hofsheier* itself were fairly limited: the 22-year-old appellant engaged in voluntary oral copulation with a 16-year-old girl, violating Penal Code section 288a, subdivision (b)(1). (*Supra*, 37 Cal.4th 1185, 1192.) The Court compared appellant to someone convicted of the only intercourse offense that would match the ages of appellant and the victim: Penal Code section 261.5, subdivision (c). (*Id.*, at p. 1195.)

Given this relatively straightforward scenario, the Court held that requiring appellant to register as a sex offender was an equal protection violation; while the oral copulation offense was subject to mandatory registration under Penal Code section 290, the intercourse offense was not.

Although *Hofsheier* itself was fairly simple, it opened a Pandora's Box. Its analysis has been applied to other offenses, sometimes with inconsistent results. Moreover, litigants and the courts have begun to expand it beyond sex offender registration. Unless it is clarified or overruled, equal protection jurisprudence in California will become more and more tangled.

As the Court's subsidiary questions concern some of the problems that have emerged in *Hofsheier's* wake, such issues will primarily be discussed in the portion of this letter brief that follows.

II. Responses to the Court's Subsidiary Questions

1. The Deferential Rational Basis Test Should Be Used

In *Hofsheier*, the Court identified three possible levels of analysis: strict scrutiny for statutes that involve suspect classifications or fundamental interests, intermediate scrutiny for classifications based on gender, and the deferential rational relationship test for all other legislation. (*Supra*, 37 Cal.4th 1185, 1200.) The Court correctly chose the third (*ibid.*), as sex offender registration does not involve a fundamental interest and is not gender-based; there is no equal protection violation if a statutory distinction has a rational relationship to a legitimate state purpose.

The more problematic issue is determining whether two groups are similarly situated, and if so, whether there is a rational basis for distinguishing between them.

2. Practical Difficulties Applying *Hofsheier* in the Trial and Appellate Courts

The primary problem *Hofsheier* presents to the lower courts today is how to properly apply it. Early questions regarding procedure were mostly resolved by *People v. Picklesimer* (2010) 48 Cal.4th 330. Serious substantive issues remain.

Hofsheier essentially lays out a deceptively simple two-step analysis: determine if there are similarly situated classes, then decide if any disparity in treatment is justified.

In practice, this is not so simple.

1. Step One: What Constitutes a Class?

The determination of what constitutes a similarly situated class is at the heart of this case, and of *People v. Manchel* (2008) 163 Cal.App.4th 1108 (*Manchel*). In that case, appellant argued that he was similarly situated to someone convicted of violating Penal Code section 261.5. (At pp. 1112-1113.) Yet because intercourse in his case could also have been prosecuted under Penal Code section 288, subdivision (c)(1), another mandatory registration offense, the Court of Appeal held that appellant could not show that he was similarly situated to a group of offenders who would not be subject to such registration. (At p. 1115.)

In contrast, *People v. Ranscht* (2009) 173 Cal.App.4th 1369 (*Ranscht*) effectively held that the class of persons convicted sexual penetration of a minor (Pen. Code, § 289, subd. (h)) could only be compared with persons convicted of unlawful sexual intercourse (Pen. Code, § 261.5), even though the victim in *Ranscht* was under age 14.

Even further afield, *People v. Ruffin* (2011) 200 Cal.App.4th 669 held that inmates who commit oral copulation in prison are similarly situated to guards who commit oral copulation with inmates. (Pen. Code, §§ 288a, subd. (e); 289.6, subd. (a)(2).)

The first problem, raised squarely by the case now before the Court, is what criteria should be used to determine the contours of any similarly situated classes.

2. Step Two: Is Disparate Treatment Justified?

The second issue, concerning whether any disparity in treatment is justified, was not included in the People's petition for review in this case, because *Hofsheier* had already decided that no such justification existed for

oral copulation offenses. (*Supra*, 37 Cal.4th 1185, 1203-1207.) However, that issue is alive and well for other sexual acts.

In *Ranscht, supra*, 173 Cal.App.4th 1369 the court assumed that *Hofsheier* would apply to sexual penetration offenses (Pen. Code, § 289) as well. Having determined that similarly situated classes existed, the *Ranscht* court did not examine whether there might be a rational basis for disparate treatment.

In contrast, *People v. Valdez* (2009) 174 Cal.App.4th 1528 (*Valdez*) did consider that question, but in the probation eligibility context. In *Valdez*, appellant was convicted of, among other things, raping his spouse (Pen. Code, § 262, subd. (a)(1)) and sexually penetrating her against her will (former Pen. Code, § 289, subd. (a)(1), now subd. (a)(1)(A)). (*Valdez, supra*, 174 Cal.App.4th at p. 1530.) Appellant argued that his probation ineligibility (Pen. Code, § 1203.065) was due solely to the sexual penetration charge, as spousal rape is not listed in Penal Code section 1203.065, and that this was an equal protection violation, under *Hofsheier*. (*Valdez, supra*, 174 Cal.App.4th at p. 1530.) However, the Court of Appeal concluded that any disparate treatment was justified, finding that societal goals could support giving trial judges the power to grant probation to a rapist spouse in light of possible children in the marriage, and that sexual penetration with a foreign object can include items that pose a greater risk of injury to the victim. (*Id.*, at pp. 1531-1532.)

3. *Hofsheier* Has Been Extended Beyond Sex Offender Registration

In *Valdez, supra*, 174 Cal.App.4th 1528, a defendant relied on *Hofsheier* to challenge his lack of probation eligibility. That case represents

only one of several attempts to expand *Hofsheier* beyond sex offender registration.

In *People v. Turnage* (2012) 55 Cal.4th 62 (*Turnage*), this Court addressed a different case where *Hofsheier* had been extended in unexpected ways. In *Turnage, supra*, appellant successfully argued in the Court of Appeal that his felony conviction for planting a false bomb (Pen. Code, § 148.1, subd. (d)) violated equal protection, because it did not have a sustained fear element, unlike the false weapon of mass destruction statute (Pen. Code, § 11418.1). This Court reversed the Court of Appeal, holding that the Legislature's drafting choices were reasonable, in light of the differences between bombs and weapons of mass destruction.

The Court of Appeal rejected a similar *Hofsheier*-based equal protection challenge to the use of a prior DUI manslaughter conviction as a strike in *People v. Doyle* (2013) 220 Cal.App.4th 1251.

On the other hand, in *People v. Schoop* (2012) 212 Cal.App.4th 457, the Court of Appeal addressed an equal protection challenge by an appellant convicted of possessing child pornography. (Pen. Code, § 311.1.) Appellant would have to complete a ten-year rehabilitation period before being eligible for a certificate of rehabilitation, unlike the seven-year period for similar offenses. Relying on *Hofsheier*, the Court of Appeal agreed that this was an equal protection violation. (At p. 474.)

People v. Tirey (G048369)[1] is a similar case currently pending in the Court of Appeal. On November 15, 2013, the court held (in its previously-

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1 This case is discussed to illustrate the difficulties facing the Court of Appeal in applying *Hofsheier* to various situations, rather than as authority.

published opinion) that it was an equal protection violation to deny appellant a certificate of rehabilitation and relief from registration under Penal Code section 290.5. Appellant had been convicted of violating Penal Code section 288, subdivision (a), which is statutorily ineligible for such relief. Yet because violations of Penal Code section 288.7 were not similarly excluded from section 290.5 relief, the Court of Appeal held that an equal protection violation existed. However, on December 13, 2013, the court granted the Attorney General's petition for rehearing, to address the effect of the lifetime parole provisions of Penal Code section 3000.1.

4. Application of *Hofsheier* Should be Constrained by its Facts and by Established Equal Protection Principles

In *Manchel, supra*, 163 Cal.App.4th 1108, 1114-1115, the Court of Appeal reasoned that *Hofsheier* was limited by its own language, which expressly excluded from its holding cases where registration would be mandatory regardless of the sexual act in question. (Citing *Hofsheier, supra*, 37 Cal.4th 1185, 1198.)

However, in light of attempts to expand *Hofsheier* beyond sex offender registration (see discussion in previous section), it is necessary for the limits of *Hofsheier* to be explicitly established. Otherwise, *Hofsheier* will be applied to more and more criminal statutes, to challenge everything from length of sentence to felony versus misdemeanor status to eligibility for various forms of relief. Left unchecked, *Hofsheier* will oblige the courts to weigh many parts of California's criminal law against each other, looking for variances

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It is not intended as a citation to an unpublished opinion. (Cal. Rules of Court, rule 8.1115.)

and disparities. Every quirk will be challenged as an equal protection violation.

If the Court declines to overrule *Hofsheier*, it should reaffirm traditional equal protection principles and make it clear that *Hofsheier* did not fundamentally alter them. It should make clear what the limits of *Hofsheier's* holding are.

The same criminal conduct is often covered by more than one statute. This does not violate the equal protection guarantee. (*United States v. Batchelder* (1979) 442 U.S. 114, 123-125; *People v. Wilkinson* (2004) 33 Cal.4th 821, 838.)

"It is the prerogative, indeed the duty, of the Legislature to recognize degrees of culpability when drafting a Penal Code." (*Michael M. v. Superior Court* (1979) 25 Cal.3d 608, 613; aff'd sub nom. *Michael M. v. Superior Court of Sonoma County* (1981) 450 U.S. 464.) The Legislature has broad discretion in the classification of punishments; "underinclusiveness rarely justifies invalidating its determination in that regard." (*People v. Ward* (2005) 36 Cal.4th 186, 217.) Normally, the "widest discretion" is accorded to a legislative determination "to attack some, rather than all, of the manifestations of the evil aimed at." (*McLaughlin v. Florida* (1964) 379 U.S. 184, 191.)

Rational-basis equal protection review is not a vehicle whereby the courts pass judgment on "the wisdom, fairness, or logic of legislative choices." (*Heller v. Doe* (1993) 509 U.S. 312, 319; quoting *FCC v. Beach Communications* (1993) 508 U.S. 307, 313.) In such situations, the disparate treatment of similarly situated classes must be upheld unless the party challenging the law can negate every conceivable basis that might

support the law. (*Heller v. Doe, supra*, 509 U.S. at p. 320.) A classification does not fail rational-basis review because it results in some inequality in practice. (*Id.*, at p. 321.) Under rational-basis review, legislative choices are not subject to courtroom factfinding; they may be based on "rational speculation unsupported by evidence or empirical data." (*Id.*, at p. 320, quoting *FCC v. Beach Communications, supra*, 508 U.S. at p. 315.) The problems of government are practical, and may justify or even require "rough accommodations—illogical, it may be, and unscientific." (*Id.*, at p. 321, quoting *Metropolis Theatre Co. v. Chicago* (1913) 228 U.S. 61, 69-70.)

5. *Hofsheier's* Equal Protection Analysis Should Not Extend Beyond Sex Offender Registration

Although *Hofsheier* addressed sex offender registration only, attorneys and courts have attempted to expand it to other areas, sometimes successfully. (See discussion of subsidiary question 3.) There is a danger that the lower courts, bound by *Hofsheier* (see *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450), may consider it to have supplanted traditional equal protection analysis (discussed in the response to subsidiary question 4, above).

Hofsheier concluded that in the case before it, there was no justification for requiring persons convicted of oral copulation with a 16 or 17 year old to register as a sex offender, when intercourse with an adolescent of the same age would not require registration. (*Supra*, 37 Cal.4th 1185, 1206-1207.) The Court reasoned that there was nothing showing that the former class of offenders was "particularly incorrigible"

and thus there was no rational basis for the distinction between the two groups. (*Ibid.*)

In *Ranscht, supra*, 173 Cal.App.4th 1369, the Court of Appeal did not attempt to determine if there was a rational basis for distinguishing between sexual penetration and intercourse. The opinion decided that defendants convicted of sexual penetration are similarly situated to those convicted of intercourse, and on that basis alone held that equal protection had been violated. (*Id.*, at p. 1375.)

Yet as illustrated by *Valdez, supra*, 174 Cal.App.4th 1528, other courts believe that there is a rational basis for treating the two sexual acts differently. As noted by the Court of Appeal, pregnancy is one consideration, but not the only one, as sexual penetration can be achieved through use of various objects, some of which can be quite dangerous. (*Id.*, at p. 1532.) There is merit to *Valdez'* determination, as sexual penetration can be accomplished by "unknown" objects, which can include "any foreign object, substance, instrument, or device." (Pen. Code, § 289, subd. (k)(2).)

In *People v. Zavala* (2008) 168 Cal.App.4th 772, the victim was sexually penetrated with a tool handle, which defendant then kicked (at p. 775). Although the defendant was acquitted of the sexual penetration charge, he was nonetheless convicted of torture. (*Id.*, at p. 778.) Still, the case illustrates a situation that could have concerned the Legislature: the possibility of sexual penetration with foreign objects, such as the handles of tools or brooms, pipes, etc. Such objects are quite dangerous due to the great internal injuries that could result if they are used for sexual penetration. A more extreme case was before this Court in *People v. Morgan*

(2007) 42 Cal.4th 593, where the murder victim was sexually penetrated with a sharp, serrated object, possibly a knife or rebar (at p. 601).

Although both *People v. Zavala* and *People v. Morgan* involved violent, forcible acts of sexual penetration, hospital emergency rooms have seen cases of foreign objects inserted in rectums, for example.[2] Although such patients are often loath to explain how various objects came to be in that location, it is reasonable to believe that many such problems are self-inflicted and for sexual gratification. The Legislature could reasonably have determined that sexual penetration of a minor with a foreign object is potentially dangerous in ways that intercourse generally is not.

Yet *Ranscht, supra,* 173 Cal.App.4th 1369, did not even consider these possibilities. Presumably, the *Ranscht* majority felt that *Hofsheier* had already made the determination that all sex acts are the essentially the same for equal protection purposes, and that there cannot be a rational basis for distinguishing between them.

If the Court does not overrule *Hofsheier*, it should clarify that *Hofsheier* only applies to sex offender registration, and that it did not determine that the Legislature could never validly distinguish between different sex acts.

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[2] See Goldberg & Steele, *Rectal Foreign Bodies* (Feb. 2010) Surgical Clinics of North America, Vol. 90, No. 1. This article can be found online at <http://www.mdconsult.com/das/article/body/434122029-2/jorg=journal&source=&sp=22826884&sid=0/N/731866/s00396109090015 71.pdf?issn=0039-6109> (as of Jan. 3, 2014). Should the Court prefer hard copies of the article, the People will provide them, upon request.

6. If *Hofsheier* Is Overruled, the Court's Decision Should Apply Retroactively, after Notice of the Reinstated Registration Requirement Is Given

If the Court overrules *Hofsheier*, that decision should apply retroactively for several reasons.

First and foremost, sex offender registration is not punishment. (*In re Alva* (2004) 33 Cal.4th 254, 268.) A person may be required to register for crimes that were committed before they became registerable offenses. (*People v. Castellanos* (1999) 21 Cal.4th 785.) If *Hofsheier* were overruled, it would have the effect of making all offenses listed in Penal Code section 290, subdivision (c), registerable once more. Under *People v. Castellanos*, there would be no bar to requiring registration for former registrants who had been judicially relieved of that duty (or who never had it imposed, for judgments that occurred after *Hofsheier*). (See also Pen. Code, § 290.023.)

Second, overruling *Hofsheier* would restore the registration statute to its original state, in terms of what crimes are registerable. It would make no sense to make the offenses in the registration statute subject to mandatory registration once more, and then create a small class of cases where it is not mandatory after all.

Should the Court overrule *Hofsheier* retroactively, former registrants who have been relieved of their registration duty would not face legal ambush. Although *People v. Castellanos* permits the registration duty to be imposed, registrants who were relieved of the duty to register or were never advised of a duty to register should be given notice of the duty before criminal sanctions for failure to register can accrue. (See *People v. Garcia*

(2001) 25 Cal.4th 744 [failure to register requires willful omission; knowledge of duty to register is a prerequisite].)

III. Reasons to Consider Overruling *Hofsheier*

The Court should reevaluate *Hofsheier* and consider whether the case should be clarified and limited, or if it should be overruled entirely.

As laid out in the responses to the Court's subsidiary questions, *Hofsheier* is a problematic case. It has muddied the waters regarding the equal protection analysis, and this is beginning to spread to other areas of criminal law.

The Court may also wish to reconsider the determination that underlay *Hofsheier*: that requiring registration for voluntary oral copulation with a minor, but not for unlawful sexual intercourse, violates equal protection.

As discussed in the answer to subsidiary question 4, the Legislature's determinations are entitled to great weight. If there is a conceivable, rational reason for the distinction between classes, the law must be upheld.

In *Hofsheier*, the Court declined to apply the traditional rule that persons convicted of different crimes are not similarly situated. (*Supra*, 37 Cal.4th 1185, 1199; citing *People v. Barrera* (2006) 14 Cal.App.4th 1555, 1565.) The Court worried that rule could allow the state to "arbitrarily discriminate between similarly situated persons simply by classifying their conduct under different criminal statutes." (*Hofsheier, supra*, 37 Cal.4th at p. 1199; citing *Lawrence v. Texas* (2003) 539 U.S. 558, 582 (conc. opn. of O'Connor, J.))

In *Lawrence v. Texas*, the High Court considered Texas' criminal prohibition on same-sex sexual "intercourse." The majority struck the statute down based on the Due Process Clause of the Fourteenth Amendment and its guarantee of liberty and autonomy, including private sexual relationships between consenting adults. (539 U.S. at pp. 564-574.) In the majority's view, the Equal Protection Clause was insufficient, because it might not protect that same liberty, if the statute were drawn differently. (*Id.*, at pp. 574-575.)

Justice O'Connor, on the other hand, relied upon the Fourteenth Amendment's Equal Protection Clause. (*Id.*, at p. 579 (conc. opn.)) Her analysis, however, was grounded in large part on Texas' clearly-expressed animus toward homosexuals. (*Id.*, at pp. 581-583.) She noted "Texas treats the same conduct differently based solely on the participants." (*Id.*, at p. 581.) That is not the case in California.

The California statutes at issue in this case address sexual activity committed with a minor victim. There is no right to engage in sexual conduct with a minor. To the contrary, the state has a compelling interest in safeguarding the physical and psychological well-being of minors. (*New York v. Ferber* (1982) 458 U.S. 747, 756-757.) "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." (*Id.*, at p. 757 [child pornography].)

Even if the two classes at issue here are in fact similarly situated, despite having been convicted of different crimes based on different conduct, any disparity between the two statutes is not necessarily an equal protection violation.

Of particular note, the sex offenses at issue here concern child victims.[3] This is relevant, because research has shown that adolescents do not appreciate the risks of oral sex and are consequently more willing to engage in it. (Halpern-Felsher, et al., *Oral Versus Vaginal Sex Among Adolescents: Perceptions, Attitudes, and Behavior* (April 2005) Pediatrics, Vol. 115, No. 4.[4]) The Halpern-Felsher study was based off of surveys of 580 ninth grade students at two California high schools. (At p. 846.) Broadly, the adolescents surveyed viewed oral sex as being safer than vaginal intercourse and that it carried fewer social and emotional risks; adolescents were more willing to engage in it. (*Id.*) Some students erroneously believed that oral sex could not lead to some sexually-transmitted infections at all. (*Id.*, at p. 848 [14% believed oral copulation could not transmit chlamydia, 13% believed it could not transmit HIV].)

A related study surveyed California high school students who had engaged in oral and/or vaginal sex by the spring of the tenth grade. (Brady & Halpern-Felsher, *Adolescent's Reported Consequences of Having Oral Sex*

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[3] Other subdivisions of Penal Code section 288a are not limited to child victims, i.e., with force or duress (subd. (c)(2)(A)), by threat of retaliation (subd. (c)(3)), certain aider and abettor situations (subd. (d)(1)), while imprisoned (subd. (e)), on an unconscious victim (subd. (f)), on a victim whose disability precludes consent (subd. (g)), in certain institutions on a victim whose disability precludes consent (subd. (h)), on an intoxicated or anesthetized victim (subd. (i)), by impersonation (subd. (j)), and under color of authority (subd. (k)).

[4] Hereinafter "Halpern-Felsher." This article can be found online at <http://pediatrics.aappublications.org/content/115/4/845.full.html> (as of Jan. 2, 2014). Should the Court prefer hard copies of the article, the People will provide them, upon request.

Versus Vaginal Sex (Feb. 2007) Pediatrics, Vol. 119, No. 2.[5]) Although surveyed adolescents who only engaged in oral sex reported the fewest consequences, those who engaged in both oral and vaginal sex reported the most consequences, more than those who engaged in vaginal sex only. (*Id.*, at pp. 232-233.) Among adolescents who only engaged in vaginal sex, 9% reported a resulting pregnancy; among those who engaged in both oral and vaginal sex, 14% had become pregnant or impregnated another. (*Id.*, at p. 232.) Among students who only engaged in oral sex, 2% reported contracting a sexually-transmitted infection; the rate was 5% among those who only engaged in vaginal sex, and 13% among those who engaged in both vaginal and oral sex. (*Id.*, at pp. 232-233.)

On its own, oral sex presents a smaller degree of risk to children: pregnancy is impossible as a practical matter, and the rate of transmission of sexually-transmitted infections is low. Yet when children engage in both vaginal and oral sex, the rate of pregnancy increases notably, and sexually transmitted infections more than double. (Brady, at pp. 232-233.)

The Legislature could rationally have believed that because minors tend to underestimate the potential consequences of oral copulation, and are therefore more willing to engage in it, those who engage in oral copulation with minors should register as sex offenders.

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5 Hereinafter "Brady." This article can be found online at <http://pediatrics.aappublications.org/content/119/2/229.full.html> (as of Jan. 2, 2014). Should the Court prefer hard copies of the article, the People will provide them, upon request.

Conclusion

The People respectfully request that *Hofsheier* be clarified or overruled.

At the very least, *Hofsheier* should be limited to its facts, and limited to sex offender registration only. It should also be clarified that it has not replaced traditional equal protection analysis for the provisions of criminal law.

Clarifying and limiting *Hofsheier* would minimize the likelihood of it affecting other areas of criminal law in unforeseen and unintended ways.

In the alternative, *Hofsheier* should be overruled. The State of California has a strong interest in protecting minors from adults who might take advantage of them sexually. Although the statutes in this area may not be perfectly uniform, equal protection does not mandate the rigid standardization of the collateral consequences of a conviction.

Sincerely,

BRENT J. SCHULTZE
Deputy District Attorney
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SAN BERNARDINO COUNTY
OFFICE OF THE DISTRICT ATTORNEY
PROOF OF SERVICE BY UNITED STATES MAIL

STATE OF CALIFORNIA
ss.
COUNTY OF SAN BERNARDINO

JOHNSON v. CALIFORNIA DEPT. OF JUSTICE (PEOPLE)
S209167

Brent J. Schultze says:

That I am a citizen of the United States and employed in San Bernardino County, over eighteen years of age and not a party to the within action; that my business address is 412 W. Hospitality Lane, First Floor, San Bernardino, CA, 92415-0042.

That I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

That on January 6, 2014, I served the within:

SUPPLEMENTAL LETTER BRIEF

on interested parties by depositing a copy thereof, enclosed in a sealed envelope for collection and mailing on that date following ordinary business practice at 412 W. Hospitality Lane, First Floor, San Bernardino, CA, 92415-0042, addressed as follows:

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I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino, California, on January 6, 2014.

Brent J. Schultze

PROOF OF SERVICE BY UNITED STATES MAIL

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JAMES RICHARD JOHNSON Petitioner and Appellant, *v.* ***CALIFORNIA DEPARTMENT OF JUSTICE*** Respondent; ***THE PEOPLE OF THE STATE OF CALIFORNIA*** Real Party in Interest and Respondent.	**Case No. S209167** Court of Appeal Case No. E055194 (4th Dist., Div. 2) San Bernardino County Superior Court Case No. CIVDS1105422

CERTIFICATE OF WORD COUNT

I certify that the **SUPPLEMENTAL LETTER BRIEF** in the above case uses a 13-point Bookman Old Style font and contains **3,753** words.

Done this 7th day of January, 2014, at San Bernardino, California.

Respectfully submitted,

MICHAEL A. RAMOS,
District Attorney,

BRENT J. SCHULTZE,
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