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9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **SOUTHERN DIVISION**

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 STUART CARSON, et al.,

17 Defendants.

CASE NO. 8:09-CR-00077-JVS

**DEFENDANTS' REPLY  
 MEMORANDUM IN SUPPORT OF  
 MOTION TO DISMISS THE  
 INDICTMENT**

Hearing Date: May 21, 2012

Hearing Time: 3:00PM

Courtroom: 10C

Trial Date: June 5, 2012

Honorable James V. Selna

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1  
2 **I. INTRODUCTION**

3 Significant impediments to accessing critical evidence have, *in toto*, denied  
4 Defendants' constitutional right to a fundamentally fair proceeding in which they  
5 have a meaningful opportunity to present a defense. Given the opaque and rarely  
6 enforced statutes involved here, the government should be especially vigilant to  
7 ensure defense access to material evidence. The government's responsibility for  
8 particular impediments aside, constitutional principles the Supreme Court has  
9 applied in differing contexts should compel the Court to dismiss the Indictment.

10 In its Opposition ("Opp'n"), the government slices and dices, explaining its  
11 position why due process has not been violated by each individual impediment and  
12 then arguing that no constitutional problem exists. Even when addressing the total  
13 effect of the impediments the government still slices and dices, arguing why each  
14 line of authority does not perfectly support Defendants' position. The government  
15 gives short shrift to the common thread of these cases: a defendant's right to access  
16 relevant evidence sufficient to allow for presenting a complete defense.

17 The government also has severely overstated two important matters. First, the  
18 government miscasts the key question as one of good faith, when the real issue is  
19 whether, regardless of good faith or bad, can Defendants present a complete  
20 defense? Moreover, the government ignores that the Ninth Circuit has described  
21 bad faith as acting to gain an unfair tactical edge. The totality of circumstances  
22 supports such a conclusion here. Second, the government holds Defendants to a  
23 heightened materiality standard the cases do not support. The applicable test is  
24 whether a defendant has made a plausible showing of how evidence might be both  
25 material (relevant) and helpful to the defense, given the reality that a defendant may  
26 have difficulty showing this for unattainable evidence.

27 Finally, the government has painted an unduly idyllic picture of its *Brady*  
28 compliance. In particular, lost in the government's lengthy account of the parties'  
(including CCI) exchange of correspondence is that the government significantly

1 reduced Defendants' list of *Brady* items it forwarded to CCI. Thus, not only CCI,  
2 but also the government exercised unfettered discretion to unilaterally redact  
3 requests and deprive Defendants of a comprehensive *Brady* review.

## 4 II. ARGUMENT

### 5 A. Defendants Cosgrove and Edmonds Have Been Denied Their 6 Constitutional Right to Present a Complete Defense

7 Numerous Supreme Court decisions find a constitutional right to access and  
8 use relevant evidence. *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982) is  
9 exemplary. The Court analyzed the implications of legitimate deportation of an  
10 alien witness who defendant contended would provide relevant evidence. The Court  
11 recognized that it had explored the constitutional principles implicated by the case in  
12 other contexts, including *Roviaro v. United States*, 353 U.S. 53 (1957) (Disclosure  
13 of confidential informer); *Washington v. Texas*, 388 U.S. 14 (1967)(State statute  
14 prohibiting co-conspirator testimony); *Brady v. Maryland*, 373 U.S. 83 (1963);  
15 *United States v. Marion*, 404 U.S. 307 (1971) (Pre-indictment delay). Based on  
16 these authorities and others, the Court assessed whether the defendant could make  
17 "some plausible showing of how [the] unavailable evidence would have been both  
18 material and favorable to his defense." 458 U.S. at 867. The Court concluded that  
19 the defendant had not made that showing. *Id.* at 874.

20 The government ignores the richness of the Court's analyses in *Valenzuela-*  
21 *Bernal* and cases cited therein, and their application here. *See Gray v. Klauser*, 282  
22 F.3d 633, 644-5 (9th Cir. 2002)(recognizing "the Supreme court has again and again  
23 noted the 'fundamental' or 'essential' character of a defendant's right both to  
24 present a defense, and to present witnesses as part of that defense.") These cases  
25 recognize that a defendant is entitled to basic fairness, and that courts should eschew  
26 rigidity and consider all circumstances bearing on the charges, potential defenses  
27 and possible relevance of the unavailable evidence. Governmental bad faith is not  
28 necessary to conclude a defendant has been denied constitutional rights.

The government evades these first two principles and, on a bad faith

1 requirement, severely oversells. It ignores many contexts where a defendant's right  
2 to a fair trial may be violated without bad faith, as illustrated by *Brady* ("the  
3 suppression by the prosecution of [exculpatory] evidence... violates due  
4 process...irrespective of the good faith or bad faith of the prosecution." 373 U.S. at  
5 87), and cases like *Roviaro* and *Valenzuela-Bernal*, in which the government acted  
6 legitimately but serious questions remained about whether a defendant's rights had  
7 been infringed. See *Strickland v. Washington*, 466 U.S. 668, 685-6, 688 (1984)(right  
8 to effective assistance of counsel can be violated even absent government action if  
9 there has not been adequate legal assistance; "inquiry must be whether counsel's  
10 assistance was reasonable considering all the circumstances").

11 The government sidesteps this aspect of *Valenzuela-Bernal* , instead citing  
12 Ninth Circuit cases requiring government bad faith in witness deportation cases.  
13 Opp'n at 19-20. But Ninth Circuit gloss on *Valenzuela-Bernal* does not negate the  
14 larger point: bad faith is not needed to decide, under the totality of circumstances  
15 approach, that a defendant has been deprived of due process. Similarly, the  
16 government oversimplifies the "lost or missing evidence cases" (*Youngblood* and  
17 *Trombetta*; Opp'n at 20) . Those cases involved the materiality of physical  
18 evidence, the utility of which to the defendant was unknown. *Lovasco* (Opp'n at  
19 20) is in line with these cases holding that a reasonable investigative delay had not  
20 caused prejudice to violate due process. The Supreme Court has indicated that this  
21 is the import of *Lovasco*, *Valenzuela-Bernal*, 458 U.S. at 869, not, as plaintiff  
22 asserts, that bad faith is a prerequisite to a due process violation.

23 Here, much is known about the evidence Defendants have been unable to  
24 obtain. The evidence includes documents and witnesses central to transactions at  
25 issue. While the government says "there is no basis to believe that the unavailable  
26 [CCI project files and commission payment records] [have] any exculpatory value,"  
27 Opp'n at 13-14, the government thought otherwise in asking CCI to produce these  
28 documents. Because Defendant cannot obtain foreign discovery, the impact of their

1 inability to obtain CCI's records is especially severe. See Declaration of Michael A.  
2 Weinbaum to Defendants' Motion in Limine, at ¶ 8, filed April 30, 2012  
3 ("Weinbaum Decl."). The government's invocation of foreign discovery cases  
4 (Opp'n at 15, 17) is both superficial and fails to address the foreign discovery  
5 disparity created by various government treaties and MLATs.<sup>1</sup> *United States v.*  
6 *Sensi*, 879 F. 2d 888, 899 (D.C. Cir. 1989) and *United States v. Zabeneh*, 837 F.2d  
7 1249, 1259-60 (5th Cir. 1988), holding that the inability to subpoena foreign  
8 witnesses does not, in and of itself, bar a prosecution, fail to address the impact of  
9 impediments as exist here. *United States v. Mejia*, 448 F.3d 436, 444-45 (D.C. Cir.  
10 2006) and *United States v. Clarke*, 767 F. Supp. 2d 70-72 (D.D.C. 2011), also fail in  
11 this regard and involved facts where there was no defense prejudice from the  
12 inability to access particular foreign evidence; in *Mejia* defense counsel had been  
13 able travel abroad to obtain evidence and had not asked the court to issue letters  
14 rogatory.

15 As to "the admonition given to CCI employees by its then general-counsel"  
16 not to talk with defense counsel, Opp'n at 16-17, the government does not say that  
17 interfering with defendants' interview of witnesses would not raise a serious Sixth  
18 amendment issue, only that it was not complicit. There is no declaration to that  
19 effect. Moreover, since DOJ and CCI were involved in a joint investigation, the  
20 government is accountable for the obstructive act of its investigative partner.

21 Defendants' plight meets the *Valenzuela-Bernal* plausible showing standard.  
22 See Defendants' Opening Brief (Docket #574 "Defendants Notice of Motion and  
23 Motion to Dismiss Indictment" filed on 3/5/12), pages 17-20. The government  
24 distinguishes the facts of *Roviaro*, involving an informer-eyewitness, calling them a  
25

26 <sup>1</sup> DOJ Prosecutor Mendelsohn stated in a 2008 interview, "we have been  
27 increasingly effective in gathering evidence overseas through treaties as well as  
28 informal arrangements with law enforcement in other countries. That has made our  
work easier." *Mendelsohn Says Criminal Bribery Prosecutions Doubled in 2007*, 22  
Corporate Crime Reporter 36(1) (September 16, 2008), available at  
<http://www.corporatecrimereporter.com/mendelsohn091608.htm>.

1 “far cry” from those here. Opp’n at 21. Perhaps, perhaps not; the reality is that  
2 since Defendants can’t access witnesses they can’t know whether there are others  
3 (besides those Defendants have been able to identify) who, based on firsthand  
4 knowledge, would repudiate the government’s allegations. But the “relevant and  
5 helpful to the defense,” 353 U.S. at 60, standard articulated in *Roviaro* is met here,  
6 given that the unavailable evidence clearly would illuminate the true nature of the  
7 transactions at issue. See Weinbaum Decl. at ¶ 6 (CCI Project file).

8 In *Valenzuela-Bernal*, which called *Roviaro* “the closest case in point,” 458  
9 U.S. at 870, the Court stated that “the events to which a witness might testify, and  
10 the relevance of those events to the crime charged may well demonstrate either the  
11 presence or absence of the required materiality.” *Id.* at 871. Again, between the  
12 transaction documents and witnesses involved in those transactions, the unavailable  
13 information manifestly would (not just “might”) bear directly on events relevant to  
14 the crimes charged. It is disingenuous to say that because (1) the “missing records  
15 are a small subset of the millions of page” produced, and (2) defendants have the  
16 “emails and relevant commission payment records” for the charged transactions,  
17 there is no issue here. Opp’n at 21-2. The government has its cherry-picked  
18 documents and is quite happy to go to trial on that basis.

19 The government attempts to diminish *United States v. Montgomery*, like  
20 *Roviaro*, by brushing aside the Court’s test because the facts involve a drug sale  
21 with an informant. But it is the test that is important. The test was, as *Valenzuela-*  
22 *Bernal* and *Roviaro* require, considering the matters to which the missing evidence  
23 might relate and concluding that because those matters were significant, defendant  
24 had made a plausible prejudice showing requiring a remedy. 998 F.2d at 1478.

25 The government’s neutralization of *United States v. Stever*, 603 F.3d 747 (9th  
26 Cir. 2010), Opp’n at 22-3, also falls short. Undoubtedly, the circumstances here are  
27 different. But in *Stever*, as here, a combination of factors-- including both  
28 insufficient discovery and subsequent evidentiary rulings compounding the  
problem-- deprived defendant of his right to present a defense, which the Court

1 remedied. *Id.* at 756-7. Here, a combination of factors leave Defendants without a  
2 fair opportunity to obtain relevant evidence and present a complete defense. The  
3 Court should, as in *Stever*, remedy the situation and dismiss the Indictment.

4  
5 **B. The Government Did Not Afford Defendants a  
Comprehensive Brady Review**

6 In fulfilling its *Brady/Giglio* obligations, the prosecution has “a duty to learn  
7 of any favorable evidence known to others acting on the government’s behalf.”  
8 *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). “[T]he prosecution is in a unique  
9 position to obtain information known to other agents of the government, [and] it  
10 may not be excused from disclosing what it does not know but could have learned.”  
11 *Carriger v. Stewart*, 132 F.3d 463, 480 (9th Cir. 1997). The disclosure duty exists  
12 “to ensure the accuracy and fairness of trials by requiring the adversarial testing of  
13 all available evidence bearing on guilt or innocence.” *Id.* The duty is at its apex  
14 where, in a case such as this, the government will rely on the testimony of multiple  
15 cooperators. *Id.* at 479 (internal citations omitted).

16 The foregoing discussion begs two relevant questions: (1) when is an agent’s  
17 or cooperator’s involvement in a Department of Justice (“DOJ”) investigation  
18 sufficiently extensive to require the DOJ under *Brady* to obtain exculpatory  
19 information from that agent or cooperator; and (2) should the answer differ because  
20 the DOJ’s investigation assistance comes from a private entity?

21 As to the first question, the Ninth Circuit has taken an expansive approach to  
22 when a prosecutor must obtain exculpatory information from its agents. In *United*  
23 *States v. Price*, 566 F.3d 900, 909-11 (9th Cir. 2009), the Court held that a local  
24 detective who the Court called the prosecutor’s “investigative agent” possessed  
25 material favorable to the defense that the government was required to disclose under  
26 *Brady*. Relying on *Kyles* and *Carriger*, the Court stated:

26 [E]xculpatory evidence cannot be kept out of the hands of the defense  
27 just because the prosecutor does not have it, where an investigating  
28 agency does. *That would undermine Brady by allowing the*

1 *investigating agency to prevent production by keeping a report out of*  
2 *the prosecutor's hands until the agency decided the prosecutor ought*  
3 *to have it . . . .*

4 *Id.* at 909 (citations omitted) (emphasis added). *See also, United States v. Leos-*  
5 *Hermosillo*, 213 F.3d 644, \*3 (9th Cir. 2000) (unpublished, cited in *United States v.*  
6 *Cerna*, 633 F. Supp. 2d 1053, 1059 FN\* (N.D. Cal. 2009)) (Undercover San Diego  
7 police officer acting in government's behalf). Even earlier, in *United States v.*  
8 *Wood*, 57 F.3d 733 (9th Cir. 1995), where the issue was the Food and Drug  
9 Administration's obligation to disclose documents bearing on the safety of a drug  
10 the defendant was charged with unlawfully dispensing, the Court held:

11 For *Brady* purposes, the FDA and the prosecutor were one. . . . [U]nder  
12 *Brady* the agency charged with the administration of the statute, which  
13 has consulted with the prosecutor in the steps leading to prosecution, is  
14 to be considered as part of the prosecution in determining what  
15 information must be made available to the defendant charged with  
16 violation of the statute. The government cannot with its right hand say  
17 it has nothing while its left hand holds what is of value. *The*  
18 *government in the form of the prosecutor cannot tell the court there*  
19 *is nothing more to disclose while the agency interested in the*  
20 *prosecution holds in its files the information favorable to the*  
21 *defendant.*

22 *Id.* (internal citations omitted) (emphasis added).

23 These holdings are consistent with other circuits. *United States v. Antone*, 603  
24 F.2d 566, 569 (5th Cir. 1979) (*Brady* applied to knowledge of state agents as  
25 federal and state agents had "pooled their investigative energies to a considerable  
26 extent" and the overall effort was "marked by [the] spirit of cooperation." ); *Hays v.*  
27 *State of Alabama*, 85 F.3d 1492, 1497 (11th Cir. 1996) (knowledge of the FBI could  
28 be imputed to state prosecutors for *Brady* purposes). In *United States v. Risha*, the  
Third Circuit reviewed a number of rulings and essentially identified the same

1 inquiries: “(1) whether the party with knowledge of the information is acting on the  
2 government’s ‘behalf’ or is under its ‘control’; [and] (2) the extent to which state  
3 and federal governments are part of a ‘team,’ are participating in a ‘joint  
4 investigation’ or are sharing resources . . . .” 445 F.3d 298, 304 (3rd Cir. 2006).

5 *United States v. Cerna*, 633 F. Supp. 2d 1053 (N.D. Cal. 2009), which  
6 involved a multi-agency gang investigation, synthesizes these considerations in  
7 identifying two distinct *Brady* compliance tests. The district court held that, under  
8 *Price, Leos-Hermosilla, Antone* and *Hays*, when the federal prosecutor uses a state  
9 or local officer as a “lead investigative agent,” *Brady* requires that the prosecutor  
10 turn over the exculpatory information in the agent’s possession. *Cerna*, 633 F.  
11 Supp. 2d at 1059. The district court further held:

12 A second [*Brady*] avenue arises when, even though the local  
13 agency is not a “lead investigative agent,” the federal prosecutor  
14 consults local police records. When state police gives a federal  
15 investigator access to its files for the purpose of pulling items of  
16 interest to a federal investigation, *Brady* requires that the prosecution  
17 team review as well for *Brady* material within the same universe of  
18 files.

19 *Id.* at 1060. The district court stated that “[t]his [requirement] *arises not because*  
20 *there is ‘agency’ but because the federal prosecution team is given free access to*  
21 *retrieve information and the search must be even-handed as to the point of*  
22 *inquiry.*” *Id.* (emphasis added). This test is akin to one from *Risha*: whether the  
23 federal prosecutor had “‘ready access’ to the evidence.” 445 F.3d at 304-05.

24 Under these precedents, CCI acted, in *Kyles v. Whitley* parlance, “on the  
25 government’s behalf.” It should not matter whether one characterizes CCI’s  
26 integral role in the prosecution as that of lead investigator, part of the investigative  
27 team, or merely an important investigative resource under the government’s control.  
28 Whatever the label, CCI’s role in the investigation was precisely of the sort which,  
under the foregoing cases, makes exculpatory information in its possession the

1 government's *Brady* responsibility. If a local law enforcement agency had come to  
2 DOJ with the information CCI did and then collaborated with DOJ as CCI did, the  
3 government would be compelled to fulfill its *Brady* obligation by obtaining and  
4 turning over to defendants the exculpatory information possessed by that local  
5 agency. To say that because CCI is not a public agency DOJ has no *Brady*  
6 obligation, unduly confines the government's due process obligation.

7 The government's case law discussion does not successfully negate this view.  
8 Opp'n, pages 10-11. *United States v. Graham* involved a cooperating witness not  
9 acting on the government's behalf, the court not reaching the question whether, had  
10 the witness been part of the prosecution's team, *Brady* would apply. 484 F.3d at  
11 415-16. *United States v. Tadros* involved a private party possessing an audio tape  
12 which the court stated the defendant could have obtained directly. 310 F.3d at 1005.  
13 *United States v. Riley* involved hospital records which defendant had made no effort  
14 to obtain directly. 657 F.2d at 1386. *United States v. Hsieh Hui Mei Chan* involved  
15 documents deemed non-material. 754 F.2d at 824. *United States v. Zinnel* relied on  
16 *Graham* and *Hsieh Hui Mei Chan* and is hardly a meaningful ruling. Finally, in  
17 *United States v. Josleyn*, as the government acknowledged in its 2010 letter  
18 (McCormick Declaration, Exh. D), the court suggested that willful blindness to  
19 exculpatory evidence would violate *Brady*. 206 F.3d at 153 n.8.

20 The government's *Brady* review and production was inadequate. The  
21 government rejected numerous *Brady* requests (Opp'n, pages 5, 8; McCormick  
22 Decl., Exhs. E, M) as either not narrow enough to suit the government (Exh. E: Nos.  
23 17, 22, 51, 64-5, 72-4) or because the government disputed that the request sought  
24 exculpatory information (Nos. 38-40, 42-50 (concerning CCI's prior business  
25 relationship with customers)). And in certain instances, the government simply  
26 asserted without explanation that the category of documents sought (Nos. 7, 20, 36,  
27 56) was not "discoverable at this time." Exh. M, page 3.

28 CCI then pared back further. Of the government's 28 requests (McCormick  
Decl., Exh. N), CCI initially agreed to respond to only 9, refusing to provide any

1 materials it regarded as (1) attorney-client or attorney work-product protected, (2)  
2 not specifically related to an alleged corrupt payment, or (3) vague, lacking  
3 specificity or requiring subjective determinations. CCI also refused to produce any  
4 material in its parent, IMI's, possession. McCormick Decl., Exh. P. The  
5 government, as earlier (McCormick Decl., Exh. I), accepted CCI's broad invocation  
6 of privileges. While CCI later relented somewhat, it largely maintained these  
7 response limits. McCormick Decl., Exh. R.

8 Thus, what the government calls painstaking was significantly less. The  
9 government rejected many defense requests for *Brady* material, then accepted many  
10 of CCI's further rejections, including those based on selective waiver of privilege  
11 grounds the Ninth Circuit has now categorically rejected. *In re Pacific Pictures*  
12 *Corporation*, 2012 WL 1293534 (9th Cir. 2012). The government, believing it had  
13 no *Brady* obligation, afforded Defendants a *Brady* process of convenience.

14 **C. Even Under a Bad Faith Standard Dismissal is Warranted**

15 In *United States v. Pena-Gutierrez*, 223 F.3d 1080, 1085 (9th Cir. 2000)  
16 (applying a governmental bad faith standard to the *Valenzuela-Bernal* holding), the  
17 Court defined bad faith as acting "to gain an unfair tactical advantage over  
18 [defendant] at trial." *Id.* at 1085. This test for bad faith comes directly from the  
19 Supreme Court's Due Process decisions regarding prosecutorial delay. *See United*  
20 *States v. Lovasco*, 431 U.S. 783, 795-6, fn. 17 (1977); *United States v. Corona-*  
21 *Verbera*, 509 F.3d 1105, 1113 fn. 2 (9th Cir. 2007).

22 That description of bad faith describes the government's strategy here. The  
23 government has limited Defendants access to information, invoking CCI's nominal  
24 status as a third-party and refusing aggressively to enforce CCI's plea agreement to  
25 provide information. The government has thereby protected its huge tactical  
26 advantage over Defendants', who never obtained the early, complete discovery of  
27 millions of pages of documents the government in effect reviewed through CCI.  
28 Defendants' Opening Brief at 2-5. The government pressed its advantage, providing

1 Defendants limited pseudo-*Brady* disclosures only. The government's ability to  
2 establish and maintain its superior access to relevant information should not be  
3 permitted.

4 Depriving Defendants of reasonable discovery, knowing that Defendants'  
5 ability to obtain information is severely limited, is "flagrant misconduct" by the  
6 government. *Chapman*, 524 F.3d at 1085. As the Ninth Circuit has said: "[w]e  
7 have never suggested...that 'flagrant misbehavior' does not embrace reckless  
8 disregard for the prosecution's constitutional obligation." *Id.* at 1085. That  
9 constitutional obligation, as the Court in *Chapman* further recognized, includes "to  
10 assure that the defendant has a fair and impartial trial...his interest in a particular  
11 case is not necessarily to win, but to do justice." *Id.* at 1088 (internal citations and  
12 quotation marks omitted). The Ninth Circuit still more recently has strongly  
13 suggested that courts' inherent supervisory power to dismiss an indictment, when  
14 there has been prejudice to the defendant, is not narrowly confined to a particular set  
15 of bases. *United States v. Struckman*, 611 F.3d 560, 574-5 fn.9 (9th Cir 2010). In  
16 *United States v. Aguilar Noriega, et al. ("Lindsey")*, Case 2:10-cr-01031-AHM  
17 (C.D. Cal Dec. 1, 2011), Doc. No. 665, the Honorable A. Howard Matz recently  
18 applied a totality of circumstances analysis to determine that numerous errors in the  
19 prosecutorial process, some intentional, others not, warranted supervisory powers  
20 dismissal.

21 Due Process is violated if the failure to disclose evidence deprives the  
22 defendant of a fair trial, "understood as a trial resulting in a verdict worthy of  
23 confidence." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). *See Lindsey*, pgs. 29-30.  
24 Defendants have been so stymied in their efforts to defend themselves that no guilty  
25 verdict would be worthy of such confidence. The Indictment, therefore, should be  
26 dismissed.

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**III. CONCLUSION**

Based on the foregoing, Defendants Paul Cosgrove and David Edmonds respectfully request that the Court dismiss the Indictment with prejudice.

Dated: April 30, 2012

Respectfully submitted:

LAW OFFICES OF DAVID W. WIECHERT

By: s/David W. Wiechert  
David W. Wiechert

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BIENERT, MILLER & KATZMAN, PLC

By: s/Thomas H. Bienert, Jr.  
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Attorneys for Defendant PAUL COSGROVE

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Danielle Dragotta, am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 115 Avenida Miramar, San Clemente, CA 92672.

On April 30, 2012, I served the foregoing document described as **DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed and sent as follows:

**BY MAIL:** I caused such envelope(s) to be deposited in the mail at San Clemente, California with postage thereon fully prepaid to the office of the addressee(s) as indicated on the attached service list. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

**BY E-MAIL:** I caused a copy to be transmitted electronically by filing the foregoing with the clerk of the District Court using its ECF system, which electronically notifies counsel for that party.

**BY PERSONAL SERVICE:** I caused such envelope to be hand-delivered to the offices of the addressee(s) as indicated on the attached service list.

**FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on April 30, 2012 at San Clemente, California.

Danielle Dragotta  
Danielle Dragotta