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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 vs.

15 YESENIA GUADALUPE RAMIREZ, et al.,

16 Defendants.

COURT CASE NO. C2204867

NOTICE OF MOTION FOR
CONTINUANCE; MOTION FOR
CONTINUANCE; DECLARATION OF
COUNSEL

(CA Penal Code § 1050)

Date: January 13, 2022

Time: 9:00 AM

Dept.: 31

Time Est.: 10-minutes

17 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, TO THE DISTRICT**
18 **ATTORNEY FOR SANTA CLARA COUNTY, AND TO THE SANTA CLARA COUNTY**
19 **PROBATION DEPARTMENT:**

20 NOTICE IS HEREBY GIVEN that on the date and time noted above, in the above-
21 entitled court, Defendant Yesenia RAMIREZ, by and through her counsel of record
22 (Attorney Cody Salfen), will move the Court to continue the above-entitled action and
23 specifically, to continue the sentencing date in this matter to a yet to-be-determined date.
24 Ms. Ramirez seeks the needed time for both Ms. Ramirez and her counsel to be adequately
25 prepared to move forward with sentencing. This is currently set on a time-waived basis.
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1 Based upon undersigned defense counsel's correspondence with the prosecution (Deputy
2 District Attorney Rebekah Wise), it is undersigned defense counsel's understanding that the
3 prosecution (the Santa Clara District Attorney's Office) intends to oppose this
4 motion/request. Based upon undersigned defense counsel's correspondence with defense
5 counsel for co-defendant Jose Roman PORTILLO (Deputy Alternate Defender Karri Iyama),
6 it is undersigned defense counsel's understanding that Mr. Portillo and his counsel do not
7 oppose a continuance/do not oppose Ms. Ramirez's request.

8 This motion is made on the following grounds: due to circumstances outside the
9 control of undersigned defense counsel and Ms. Ramirez, Ms. Ramirez and undersigned
10 counsel are not prepared to move forward with sentencing on the currently scheduled
11 date/time. The defense is still in the process of reviewing certain discovery as it relates to
12 the sentencing in this matter. Further, the defense has retained an expert for the purposes
13 of sentencing in this matter. Said expert cannot begin, complete, and finalize his extensive
14 process, evaluation, and final report until the review of said discovery concludes. The
15 mitigation related investigation process is still in progress and cannot be concluded in time
16 for the January 13, 2022 sentencing date, despite undersigned counsel's exercise of due
17 diligence in and throughout the post-plea/pre-sentencing process. And, other components of
18 the defense's preparation for sentencing are still open/pending/incomplete. This motion will
19 be based on the attached supporting memorandum, all papers filed and records in this
20 action, the accompanying declaration of counsel, evidence taken at the hearing on this
21 motion, and argument at that hearing.

22 Dated: January 9, 2023

23 Respectfully Submitted,

24 THE SALFEN LAW FIRM
25 A Professional Law Corporation

26 

CODY B.K. SALFEN, ESQ.
[Electronically Signed on Jan. 9, 2023 @ 2145hrs]

27 CODY B.K. SALFEN, ESQ.
28 *Counsel for Defendant Yesenia Ramirez*

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Attorney for Defendant, *YESENIA GUADALUPE RAMIREZ*

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

PEOPLE OF THE STATE OF CALIFORNIA, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> YESENIA GUADALUPE RAMIREZ, et al., <p style="text-align: right;">Defendants.</p>	 	COURT CASE NO. C2204867 MOTION FOR CONTINUANCE AND DECLARATION OF COUNSEL (CA Penal Code § 1050) Date: January 13, 2022 Time: 9:00 AM Dept.: 31 Time Est.: 10-minutes
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SUPPORTING MEMORANDUM

**I. MS. RAMIREZ (THE DEFENDANT) IS ENTITLED TO A CONTINUANCE OF
HER SENTENCING HEARING UPON A SHOWING OF GOOD CAUSE; GOOD
CAUSE EXISTS GIVEN THAT DEFENSE COUNSEL HAS EXERCISED DUE
DILIGENCE IN PREPARING FOR MS. RAMIREZ'S SENTENCING**

In the present matter, good cause exists to justify and warrant the requested action – the Court’s potential granting of Ms. Ramirez’s request to continue the sentencing date in this matter. Specifically, despite undersigned counsel’s exercise of due diligence and reasonable and good faith efforts to be prepared for and by the currently set sentencing date, certain circumstances outside the immediate control of Ms. Ramirez and undersigned counsel preclude the defense from being ready to proceed to sentencing on the currently

1 scheduled date/time. Thus, in order to afford Ms. Ramirez her constitutionally guaranteed¹
2 right to effective assistance of counsel, additional time is needed. This additional time is
3 needed so the defense can complete its mitigation investigation and complete the underlying
4 inquiries, advocacy, and investigative tasks, as they relate to the pending sentencing
5 hearing in this matter.

6 Cal. Penal Code §1050(b) provides the statutory framework and legal standard when
7 a party requests such a continuance. Cal. Penal Code §1050 provides that in order to
8 continue any hearing in a criminal proceeding, including the trial, a written notice shall be
9 filed and served on all parties to the proceeding at least two court days before the hearing
10 sought to be continued, together with affidavits or declarations detailing specific facts
11 showing that a continuance is necessary. The procedural requirements have or will be met
12 in advance of the sentencing hearing.

13 As articulated in this motion/memorandum and in the accompanying declaration of
14 counsel for Ms. Ramirez, good cause exists to warrant the Court's granting of the requested
15 continuance of the sentencing hearing in this matter. Penal Code §1050(e) further provides
16 that "*Continuances shall be granted only upon a showing of good cause.*" And, the request
17 must be supported by declarations, unless the court first finds good cause to excuse the
18 notice and declaration requirement. The declaration must be executed under penalty of
19 perjury. *Brown v Superior Court* (1987) 189 Cal.3d 260, 265. The herein motion and
20 declaration, and their contents, conform to these requirements – attached hereto is a
21 declaration of undersigned defense counsel, in support of this request, in conformity with
22 the statutory requirements, and which sets forth the relevant facts and circumstances.

23 The present circumstances constitute good cause and thereby warrant the Court's
24 granting of Ms. Ramirez's request, given the defense's inability to ready for sentencing by
25 the currently scheduled date/time, despite the defense's exercise of due diligence in the post-
26 plea/pre-sentencing phase of this matter. The circumstances underlying the charges to

27 ¹ See *U.S. Const. amend. VI*. See also *Glasser v. United States* (1942) 315 U.S. 60, 75–76; *Strickland v. Washington*
28 (1984) 466 U.S. 668, 670.

1 which Ms. Ramirez pled nolo contendere occurred on multiple dates and times in and around
2 early 2022. The main kidnapping charge relates to allegations that Ms. Ramirez and Mr.
3 Portillo engaged in the coordinated kidnapping of a minor child on or about April 25, 2022,
4 preceded by multiple alleged attempts. Ms. Ramirez was arrested and booked into jail
5 shortly thereafter (in April 2022), and has remained in custody (to present). The initial
6 felony complaint (“IFC”) was filed on or about April 28, 2022. Ms. Ramirez first appeared in
7 court on April 28, 2022, at which point she was arraigned on the IFC. The IFC included
8 numerous charges and allegations, including one or more serious and/or violent felonies.
9 The IFC alleged a number of “Overt Acts”/aggravating factors along with the substantive
10 charges. The prosecution filed the first amended felony complaint (“FAC”) on or about May
11 12, 2022. In the FAC, the prosecution added additional serious and/or violent felony
12 charges. The prosecution filed a second amended felony complaint (“SAC”) on or about
13 August 1, 2022. The SAC added even more charges against Ms. Ramirez and Mr. Portillo.

14 Ms. Ramirez and Mr. Portillo both entered pleas of not guilty on June 7, 2022, and
15 the matter was set for preliminary examination on a time-not-waived basis. On June 13,
16 2022, Ms. Ramirez and Mr. Portillo were before the Court and waived their respective 10-
17 day right with respect to the preliminary examination, but both defendants remained “time
18 not waived” as to the 60-day rule/right [Cal. Penal Code §859b]. The discovery in this case
19 was and is extremely voluminous, as there was a large number of local, state, and federal
20 law enforcement officials from multiple agencies involved in the underlying investigation.

21 The multi-day preliminary examination began on August 1, 2022. The prosecution
22 presented numerous witnesses and exhibits during the preliminary examination. Near the
23 conclusion of the preliminary examination, less than four months after the main underlying
24 April 25, 2022 incident, both Ms. Ramirez and Mr. Portillo “pled open”/resolved their cases,
25 pursuant to Court indicated maximum possible sentences (on August 2, 2022). As for Ms.
26 Ramirez, she pled to a 14-year “top”, meaning the ultimate sentence would not exceed 14-
27 years of custody/prison time. This disposition leaves the Court with extremely broad
28 discretion in terms of sentencing options, including a wide range of potential state prison

1 sentences for Ms. Ramirez. Given the relatively youthful age of this case at the time Ms.
2 Ramirez pled open (and presently), the brunt of undersigned defense counsel’s efforts, up to
3 the date of the change of plea, were focused on reviewing the voluminous discovery in
4 advance of the preliminary examination, and less focused on the collection of mitigating
5 information for sentencing (i.e. mental health evaluations and history, physical
6 health/medical history, social history, work history, education background, character
7 reference information, etc.). Thus, this case has rapidly progressed (from the date of the
8 initial incident/incidents, to the preliminary examination, and now to sentencing). Similarly
9 situated defendants and cases, including cases with similar levels of seriousness with
10 respect to the allegations and charges, and cases with similar volume of (extremely
11 voluminous) discovery oftentimes take year(s) to prepare and to progress to the trial and
12 sentencing phases. Yet, in the present matter, Ms. Ramirez’s early acceptance of
13 responsibility by pleading open less than four months after the initiation of charges against
14 her understandably precluded a full and complete review of all available discovery by the
15 defense prior to the preliminary examination, despite defense counsel expending countless
16 hours on reviewing discovery, meeting with Ms. Ramirez, and coordinating all aspects of
17 this complicated and factually dense case in the months leading up to the August 2022
18 preliminary examination.

19 Ms. Ramirez’s early acceptance of responsibility, along with the 14-year “top”/Court
20 indicated maximum possible sentence, leave the Court with a wide range of sentencing
21 option. It is defense counsel’s goal (and duty) to empower the Court with supplemental
22 information (including mitigating information) in order for the Court to make a fully
23 informed sentencing decision – a decision that will, for better or for worse, change the
24 course of Ms. Ramirez’s life (for the rest of her life). The Court’s ultimate decision is not
25 exclusively based upon the allegations and charges to which Ms. Ramirez pled, but will also
26 be based upon mitigating factors and information, likely to include mental and physical
27 health related information, evidence that was gathered but not presented during the
28 preliminary examination, social and familial history, and other data. Given that Ms.

1 Ramirez was born outside of the United States, given that she lived most of her life outside
2 of the United States, given that Ms. Ramirez has resided in multiple states within the
3 United States, and given the other circumstances discussed in this motion, the process of
4 gathering, processing, and analyzing this large swath of information is and continues to be
5 a laborious and ongoing process.

6
7 **II. ON BALANCE AND IN ORDER TO CARRY-OUT SUBSTANTIAL JUSTICE, MS.**
8 **RAMIREZ'S NEED FOR A CONTINUANCE TO ENABLE HER TO FULLY**
9 **PREPARE FOR SENTENCING AND THE OBLIGATION TO AFFORD MS.**
10 **RAMIREZ A FAIR SENTENCING HEARING DRASTICALLY OUTWEIGH ANY**
11 **INCONVENIENCE TO THIRD-PARTIES, ESPECIALLY IN LIGHT OF DEFENSE**
12 **COUNSEL'S ONGOING EXERCISE OF DUE DILIGENCE DURING THE POST-**
13 **PLEA/PRE-SENTENCING PHASE**

14 Ms. Ramirez's case and circumstances warrant the Court's granting of this
15 continuance request. The grant or denial of a motion for continuance is an act within the
16 Court's discretion. *Ungar v. Sarafite* (1964) 376 US 575, 589. This discretion is not without
17 bounds: While the determination of whether in any given case a continuance should be
18 granted normally rests in the discretion of the trial court, that discretion may not be
19 exercised in such a manner as to deprive the defendant of a reasonable opportunity to
20 prepare their defense. *Jennings v Superior Court* (1967) 66 Cal.2d 867. Although the Court
21 must consider the welfare of witnesses [Penal Code §1050(g)] and the right of the
22 prosecution to a speedy disposition [Pen Code §1050(a)], it must balance these factors with
23 the fundamental rights of the defendant – i.e. it must also consider the defendant's right to
24 a fair trial. *People v. Courts* (1985) 37 Cal.3d 784, 794. This right encompasses Ms.
25 Ramirez's rights with respect to the sentencing phase of this matter. And, in the present
26 matter, although the prosecution has informally expressed its intended opposition to Ms.
27 Ramirez's anticipated request for a continuance, aside from expressing this informal
28 displeasure, the prosecution has not (formally or informally) specified its rationale for its
position on Ms. Ramirez's anticipated request.

1 In the present matter, undersigned counsel has acted diligently through all phases,
2 including the present – in the post-plea/pre-sentencing phase. Pursuant to *People v. Reed*
3 (2018) 4 Cal. 5th 989, 1004 [reh'g denied (July 25, 2018), cert. denied sub nom]; *Reed v.*
4 *California*, 139 S. Ct. 1260, 203 L. Ed. 2d 282 (2019)], a criminal trial may be continued
5 only upon a showing of good cause and trial courts have wide discretion to determine
6 whether such cause exists. Penal Code §1050, subd. (e); *Reed*, citing *People v. Doolin* (2009)
7 45 Cal.4th 390, 450. In making that determination, courts consider whether the moving
8 party has acted diligently, the anticipated benefits of the continuance, the burden that the
9 continuance would impose on witnesses, jurors, and the court, and whether a continuance
10 will accomplish or hinder substantial justice. (*Doolin*, 45 Cal.4th 390, at p. 450). Presently,
11 the moving party has acted diligently. The anticipated benefits of the continuance (with
12 respect to Ms. Ramirez) greatly outweigh any inconvenience that may be suffered by others
13 (witnesses, the assigned prosecutor, the Court, etc.) as a result of the Court's potential
14 granting of this request. The latter burden is minimal, relative to the need for Ms. Ramirez
15 to be adequately prepared to be sentenced. This is especially true in light of Ms. Ramirez's
16 early acceptance of responsibility, relative to the date of the underlying incidents, which
17 spared the witnesses, including the complaining witnesses and their family members, the
18 emotion, time, and prolonged process that would otherwise have occurred if Ms. Ramirez
19 did not, early on, accept responsibility by way of her change of plea. Further, Ms. Ramirez's
20 need to be prepared for sentencing is paramount in that she very well could face a lengthy
21 prison sentence and this is especially true in light of the broad range of sentencing options
22 this Court can and should consider in determining and affixing an appropriate sentence for
23 Ms. Ramirez. And, as noted, this includes the need for Ms. Ramirez to supplement the
24 materials upon which the Court will base its sentencing decision with a fully developed and
25 meaningful sentencing brief, which contains a full picture of Ms. Ramirez, her life, and
26 other non-case-specific datapoints relating to Ms. Ramirez.

27 Although the present motion does not pertain to a request to continue trial
28 proceedings, it is well established that the proceedings and duties relating to advocacy do

1 not end by virtue of Ms. Ramirez entering a change of plea/pleading open. The advocacy
2 related duties of defense counsel apply to sentencing proceedings, and in this case, those
3 proceedings have yet to go forward. In this case, given the broad discretion possessed by this
4 Court with respect to sentencing, this sentencing is hardly trivial or routine. This is, has
5 been, and will continue to be a very critical, involved and laborious process for Mr. Ramirez
6 and her counsel (and the Court), which therefore warrants additional due time for the
7 defense to fully prepare for such hearing. Further, there is no prejudicial effect on Ms.
8 Ramirez that would result from continuing sentencing. Ms. Ramirez (and Mr. Portillo) both
9 entered pleas of no contest to all charges, they each waived time with respect sentencing,
10 and they are both in custody.

11 Further, in the present matter, the need for a continuance is based (in part) on the
12 prosecution's recent disclosure of extremely voluminous discovery, which the prosecution
13 will likely continue to use for sentencing purposes. See *People v. Murphy* (1963) 59 Cal.2d
14 818 (error to deny continuance to prepare following last-minute amendment by prosecution).
15 The prosecution's post-preliminary-examination disclosure has delayed and prolonged the
16 defense's ability to be ready for sentencing and has prolonged the sentencing preparation
17 process for the defense. Thus, a denial of Ms. Ramirez's request to continue sentencing
18 would, in turn, strip her of the fundamental right to effective assistance of counsel. A court's
19 action may interfere with counsel's effectiveness if the court restricts a defense counsel in
20 exercising his or her representational duties and prerogatives attendant to the adversarial
21 system of justice of the United States. *Geders v. United States* (1976) 425 U.S. 80, 91. See
22 also *Herring v. New York* (1975) 422 U.S. 853, 864-65. Prematurely forcing this matter to
23 sentencing would deprive counsel, and thus Ms. Ramirez, of the reasonably adequate and
24 necessary amount of time to prepare a pivotal and vital component of Ms. Ramirez's defense
25 (i.e. a fully developed sentencing/mitigation briefing and fully developed basis for argument
26 at the sentencing hearing). Thus, a continuance is warranted and necessary. Further, a
27 continuance may not be denied if to do so would deprive counsel of reasonably adequate
28 time to prepare defense. *People v. Douglas* (1964) 61 Cal.2d 430. Denial of a proper request

1 for a continuance to prepare a defense constitutes an abuse of discretion and a denial of due
2 process. *People v. Cruz* (1978) 83 Cal.App.3d 308. Presently, the post-plea/pre-sentencing
3 process has included extensive defense investigation by defense retained investigator(s).
4 This includes ongoing efforts to obtain various records and information from national and
5 international jurisdictions and sources, locating and retaining an appropriate defense
6 expert, and coordinating and facilitating said expert and his work in terms of his conducting
7 a full evaluation of Ms. Ramirez. These integral components of advocacy are very much in
8 progress (and incomplete), despite defense counsel’s exercise of due diligence. Thus, it is
9 contrary to well established law to force Ms. Ramirez to sentencing without allowing Ms.
10 Ramirez and her counsel the reasonable and necessary time to fully prepare and present
11 Ms. Ramirez’s case for sentencing. And, although determination as to whether continuance
12 should be granted normally rests in discretion of trial court, such discretion may not be
13 exercised in manner as to deprive defendant of reasonable opportunity to prepare their
14 defense. *Jennings v. Superior Court of Contra Costa County* (1967) 66 Cal.2d 867; *People v.*
15 *Murphy* (1963) 59 Cal.2d 818.

16 As detailed in the accompanying declaration of defense counsel for Ms. Ramirez,
17 since Ms. Ramirez’s change of plea/pleading open in this matter in August 2022, counsel has
18 exercised due diligence in the post-plea/pre-sentencing phase of this matter. Whether good
19 cause exists is a question for the trial court’s discretion but requires at a minimum that the
20 party seeking continuance demonstrate it has prepared for the hearing with due diligence.
21 *People v. Jenkins* (2000) 22 Cal.4th 900, 1037; *People v. Ferrer* (2010) 184 Cal.App.4th 873,
22 879 [“To show good cause for a continuance, a party must make a showing of diligence”].
23 *People v. Johnson* (2013) 218 Cal. App. 4th 938, 942. Ms. Ramirez and counsel submit that
24 the actual efforts, including, but not necessarily limited to those details herein, meet and
25 exceed this threshold. From the time Ms. Ramirez entered a change of plea in August 2022
26 to present, undersigned counsel has exercised due diligence and has engaged in all
27 reasonable efforts to be prepared for sentencing. But, given the circumstances specific to the
28 present matter, despite these efforts, undersigned defense counsel is not and cannot be

1 ready to proceed with sentencing on the currently set sentencing date/time. Thus, existing
2 law supports the Court's granting of Ms. Ramirez's continuance request in this matter.

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1 CONCLUSION

2 For the reasons stated herein, Ms. Ramirez, by and through counsel, respectfully
3 requests a continuance of the presently set sentencing hearing date, based upon
4 undersigned counsel's exercise of due diligence and upon the good cause articulated and
5 established herein.

6 Dated: January 9, 2023

7 Respectfully Submitted,

8 THE SALFEN LAW FIRM
9 A Professional Law Corporation

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CODY B.K. SALFEN, ESQ.
[Electronically Signed on Jan. 9, 2023 @ 2147hrs]

11 CODY B.K. SALFEN, ESQ.
12 *Counsel for Defendant Yesenia Ramirez*

DECLARATION OF ATTORNEY CODY SALFEN
In Support of Defendant Yesenia Ramirez's Motion for Continuance

I, Cody B.K. Salfen, Attorney at Law, declare the following:

- (1) I am a licensed attorney in the State of California (State Bar No. 309228). I am also admitted to practice in and before the United States District Court for the North District of California. My admissions/licenses are current, valid, and I am in good standing with all applicable jurisdictions and admission/licensing authorities.
- (2) I am the attorney of record for Defendant Yesenia Guadalupe Ramirez in Superior Court of California, County of Santa Clara Docket C2204867 (People v. Ramirez, et al.). I am employed in Santa Clara County, California with/by The Salfen Law Firm, A Professional Law Corporation, and have been for the entirety of my representation of Ms. Ramirez in this matter. I have served as Ms. Ramirez's attorney in this matter from April 2022 (just after charges were initially filed) to present. I am not a party to this action.
- (3) I offer this declaration in support of Ms. Ramirez's accompanying motion for a continuance of the sentencing hearing proceedings. This Declaration, in conjunction with the accompanying motion, are submitted pursuant to Cal. Penal Code §1050 and the authorities referenced therein.
- (4) I believe that, despite my reasonable and good faith efforts and exercise of due diligence in the post-plea/pre-sentencing proceedings (in terms of preparing for the sentencing hearing), I am unfortunately not ready to proceed to sentencing on the currently scheduled date/time (January 13, 2023). There are a number of aspects of my post-plea/pre-sentencing preparation process that are still open/pending/incomplete, despite my (ongoing) best efforts and diligence in attempting to be prepared for/by January 13, 2023.
- (5) This Declaration provides detailed information about my efforts during this phase of the present matter. However, this declaration does not necessarily

1 include each and every detail and act which I have engaged in and overseen as a
2 means of preparing for the sentencing hearing. Nonetheless, I hereby seek to
3 provide the Court with the necessary amount and type of true and correct
4 information needed in order to enable the Court to make an informed
5 decision/ruling on this motion, while maintaining my duty of confidentiality to
6 my client and without revealing information that is protected by the
7 attorney/client privilege and/or information that would prematurely reveal the
8 defense sentencing strategy.

9 (6) In or around August 2022, Ms. Ramirez “pled open” to a 14-year “top”. This
10 matter is currently in a time-waived posture and is pending sentencing. Ms.
11 Ramirez has remained in custody from the date/time of her arrest in April 2022
12 to present. Ms. Ramirez has neither requested nor been granted release during
13 the post-plea/pre-sentencing phase. *Arbuckle* was and is not waived. Ms. Ramirez
14 faces a wide range of sentencing possibilities, given the open-ended nature of the
15 change of plea and the associated Court indicated 14-year “top”.

16 (7) From the onset of my representation of Ms. Ramirez in April 2022 to August 2,
17 2022 (when Ms. Ramirez pled open near the conclusion of the preliminary
18 examination), the defense paralegal assisting me in this matter has expended
19 roughly 100+ hours receiving, processing, and organizing the extremely
20 voluminous discovery in the months leading up to the preliminary examination.
21 This is in addition to the countless hours expended by other support staff/defense
22 team members and in addition to the (roughly) 120+ hours I expended on this
23 matter from the onset of my representation in April 2022 up to and through the
24 preliminary examination in early August 2022.

25 (8) From August 3, 2022 to present, I have personally spent around 60-hours on this
26 case, notwithstanding the time spent preparing the herein motion and this
27 Declaration. Most of this time I have expended after the preliminary examination
28 has been directly spent on preparing this matter for sentencing. This is in

1 addition to the countless hours spent by other members of the defense team
2 during this same period of time in anticipation of the sentencing of Ms. Ramirez.
3 This includes a paralegal, a transcriptionist/translator, multiple defense
4 investigators, and other defense team support staff. This also includes a defense
5 retained expert whose evaluation is scheduled to go forward on January 11, 2023.

6 (9) On September 27, 2022, Ms. Ramirez, an interpreter, Probation Officer Dina
7 Rocha, and I met so that P.O. Rocha could complete the Pre-Sentence
8 Investigation (“PSI”) interview with Ms. Ramirez. P.O. Rocha attended
9 remotely/via Zoom. The interview lasted for a number of hours, but did not
10 conclude on this date. During the interview/meeting, circumstances outside the
11 parties’ control significantly delayed the process and prevented it from
12 concluding on September 27. Specifically, upon arrival at Elmwood, it was
13 discovered that the jail staff failed to charge the batteries in the Zoom tablets
14 prior to the meeting, despite adherence to the jail’s meeting scheduling
15 procedures in advance of the meeting. Jail staff would not facilitate or allow us to
16 use a charging cable to provide continuous power to the devices during the
17 interview, which would have minimized disruptions and reduced delay. The
18 tablet(s) repeatedly lost power/battery charge throughout the interview, largely
19 due the jail staff’s failure to charge the devices prior to the scheduled meeting
20 (causing the meeting to temporarily cease a number of times). During the
21 meeting, we finally got to the point that there were no tablets with any amount of
22 battery charge available. And, we were therefore forced to prematurely end the
23 interview in the middle of the process. I thereafter coordinated with P.O. Rocha
24 to determine a mutually convenient date to resume the meeting. And, I
25 thereafter adhered to the proper County procedure to schedule the resumption of
26 the meeting via “Zoom for Government”. The meeting resumed approximately
27 one week later. Specifically, on October 4, 2022, Ms. Ramirez, an interpreter,
28 Probation Officer Dina Rocha, and I met/reconvened (all via Zoom) to continue

1 the PSI interview. The PSI interview concluded on October 4, 2022. Weeks later,
2 in late October 2022, I received the 37-page PSI report.

3 (10) On information and belief, Ms. Ramirez has resided in multiple countries,
4 including the United States of America and El Salvador, and in multiple states
5 within the USA. In conjunction with other members of the defense team, I have
6 worked diligently to try to identify the various holders of certain information and
7 records that may be relevant to sentencing. I have attempted to obtain such
8 information and records from individuals and organizations in these national and
9 international jurisdictions. This has been a challenging and laborious process – a
10 process that is still very much in progress.

11 (11) After Ms. Ramirez entered a change of plea in August 2022, I have exercised and
12 continue to exercise due diligence in attempting to prepare this matter for
13 sentencing in the shortest amount of time possible, without compromising my
14 ethical obligations to my client. I have engaged in time-consuming and consistent
15 efforts in coordinating the defense team in order to prepare for sentencing.

16 a. This has included, but has not necessarily been limited to coordinating
17 further defense investigation with the retained defense investigator (to
18 attempt to collect records and information from multiple national and
19 international jurisdictions, as noted, to locate and interview various
20 percipient and character witnesses, and to complete other necessary
21 components of my defense investigation as it relates to sentencing).

22 b. This has included meeting with various individuals in relation to social
23 history data collection, mitigation, and the like.

24 c. This has included coordinating vendor review, translation, and
25 transcription of the voluminous discovery provided before and *after* Ms.
26 Ramirez entered a change of plea in August 2022 (as discussed below).

27 (12) Around the time of the preliminary examination and Ms. Ramirez's change of
28 plea in August 2022, the prosecution provided additional discovery to the

1 defense, which prompted additional defense investigation relating to the
2 credibility of a key defense witness [this includes, but is not limited to a San Jose
3 Police Department report detailing a January 2022 arrest of Brandon Doe's
4 mother for a domestic violence incident against Brandon Doe's alleged father].
5 This is in addition to the defense's inquiry into another related criminal case
6 initiated shortly thereafter (involving allegations against the father of Brandon
7 Doe, which, on information and belief, suspiciously came about shortly after
8 Brandon Doe's mother was arrested and booked into jail in the mentioned
9 domestic violence case against the father). It is important to note that Brandon
10 Doe's mother was one of the prosecution witnesses at the preliminary
11 examination in the present matter. And, in light of this additional information
12 regarding the mother's own criminal history and credibility, this has called the
13 mother's credibility into question and has resulted in additional defense
14 investigation, given the mother's anticipated role in the sentencing proceedings.
15 Specifically, the PSI report dedicates numerous pages of summary of the
16 mother's statements made to the authoring probation officer (See *Ramirez PSI -*
17 *Oct. 28, 2022, pp. 9-10*). The mother is regularly referenced throughout the PSI.
18 And, per the PSI authoring probation officer, Brandon Doe's mother "will be
19 present for <the> hearing and wishes to address the Court." (*Ramirez PSI - Oct.*
20 *28, 2022, p.10*).

21 (13) To the best of my recollection, I believe the following to be true and accurate:
22 Months *after* the August 2022 change of plea, the prosecution produced hundreds
23 of jail telephone call recordings to the defense – calls/recordings involving and/or
24 relating to Ms. Ramirez (all or most of which consist of calls originating from Ms.
25 Ramirez during her time in custody in Santa Clara County). Specifically, these
26 were provided by the prosecution to defense counsel on or around October 18,
27 2022. During informal discussions with opposing counsel, it was and is my
28 understanding that the prosecution's intention was/is to potentially or even likely

1 use these, in whole or in part, for sentencing purposes. Months later, DDA Wise
2 more or less confirmed this in an email to the Court and counsel (on December
3 17, 2022) when she wrote, in part, that jail calls would “be used to impeach
4 statements made by Defendant” (referring to Ms. Ramirez), apparently in light of
5 information DDA Wise came across in reviewing the PSI report.

6 a. Generally, upon receipt of any number of jail calls/recordings, this
7 generally presents an extremely time-consuming process for defense
8 counsel. This includes the need for the defense to have the calls converted
9 (“transcoded”), prepared, transcribed, and reviewed (all or most of these
10 steps involve the use of third-party defense team/support staff members).
11 These types of calls/recordings have to first be transcoded/converted from
12 their proprietary/native file format so they are playable by defense counsel.
13 IDO utilizes a third-party vendor to handle the “transcoding” process, a
14 process and procedure which was adhered to in this case, immediately
15 upon the defense’s receipt of the recordings in October 2022. All or most of
16 these hundreds of recordings involve Spanish-language conversations. This
17 adds an additional layer and burden (in terms of the time and resources
18 needed to review these items) given the need for transcription *and*
19 translation. Upon receiving the hundreds of recordings, I immediately
20 initiated these various procedures among the defense team to accomplish
21 the laborious task of preparing and reviewing the hundreds of jail calls
22 produced by the prosecution in October 2022.

23 b. From the time I received these recordings and throughout the past
24 month(s), the prosecutor (Deputy District Attorney Rebekah Wise) and I
25 have discussed this batch of calls a number of times. In these informal
26 discussions, given the sentencing timeline and the number of recordings, I
27 had been trying to obtain some indication from the prosecution in terms of
28 whether they would assist in helping narrow the focus (i.e. specify certain

1 calls/recordings the prosecution was focusing on for sentencing). I was
2 trying to get some indication as to which specific calls/recordings they
3 deemed pertinent for sentencing purposes, given the sentencing timeline
4 and the quantity of calls. To the best of my recollection, at one point, I
5 invited the prosecution to provide their prepared transcripts and/or
6 summaries in order to help expedite the process and the defense's jail call
7 review process, as it relates to the sentencing preparation process. To date,
8 I do not believe the prosecution has provided the defense with their
9 transcripts and/or summaries (aside from the information contained within
10 the prosecution's December 15, 2022 "initial" sentencing brief).

11 (14) On December 7, 2022, DDA Wise and I again had informal discussions about the
12 jail calls. DDA Wise informed me that she was actually focusing on an entirely
13 different set of calls/recordings (calls that had been produced earlier on in the
14 case). Prior to this correspondence, my focus was on the newer set of jail calls (as
15 referenced above and as provided by the prosecution on/about October 18, 2022 –
16 the hundreds of recordings/audio files). Nonetheless, upon receiving this
17 information from DDA Wise on Dec. 7, 2022, I promptly informed the appropriate
18 defense team members to shift their focus/work to the *other/older* batch of
19 calls/recordings. It is important to note that, to the best of my recollection, the
20 "older" jail calls/recordings were shared with the defense in late July 2022
21 (roughly two-weeks prior to the preliminary examination), which rendered the
22 defense team unable to fully prepare/transcribe/translate and review the
23 recordings prior to the start of the preliminary examination.

24 (15) On December 8, 2022, DDA Wise informed the Court and counsel that it was
25 taking her longer than expected to write the prosecution's sentencing brief and
26 that she would be *"working with Defense Counsel and will provide notice about*
27 *what additional information (jail calls, etc) will be included in the brief prior to*
28 *Monday."*

1 (16) On December 12, 2022 (at around 7:30 PM), DDA Wise emailed me and provided
2 the file-names for three specific jail calls/recordings she intended to include
3 reference to in her “initial” brief. DDA Wise also made reference to a video file
4 that she intended to use in her brief. Specifically, DDA Wise wrote (in part),
5 *“These are the only three I am planning on including in my **initial brief.**”*
6 (emphasis added). This suggests the prosecution intends to potentially address
7 other jail calls/recordings in some sort of supplemental prosecution sentencing
8 briefing.

9 a. That same evening, I relayed this information to the defense team
10 paralegal so she could coordinate with the jail call reviewer (yet another
11 defense team member) to have these four files transcribed and translated
12 as soon as possible. To date, I continue to coordinate with these members of
13 the defense team on a regular basis with respect to the
14 review/transcription/translation process.

15 (17) As of the date of this declaration, the defense team has completed the
16 transcription and translation of the three audio/jail call recordings referenced in
17 DDA Wise’s December 12, 2022 email. However, the fourth file (a video) is still
18 being translated and transcribed. The transcription and translation of the video
19 file is extremely time consuming. The video is roughly 43-minutes in length. In
20 essence, law enforcement apparently captured a video of a cell phone as the
21 investigator was viewing a text message thread on the cell phone. In the video,
22 the investigator is scrolling through a text message log/thread (consisting of what
23 appears to be many days, weeks, months, etc. of text messages, presumably a
24 multi-month text conversation by/between Ms. Ramirez and a third-party). In the
25 video, the law enforcement investigator scrolls through the texts, starting with
26 the most recent text messages and goes back in time/scrolls through the
27 historical texts (i.e. the video portrays the text messages in reverse chronological
28 order). In order to help expedite the transcription and translation process, I

1 recently modified the video file such that it plays in reverse (so that it displays
2 the text messages in chronological order/in the order they were sent/received) and
3 I slowed the video playback speed down to help the transcriber/translator more
4 efficiently review, chronologically transcribe, and translate the text message
5 conversation. Nonetheless, this process is extremely time consuming and is very
6 much still in progress and incomplete. It would be extremely helpful and less
7 time consuming if the prosecution would share its full transcriptions and
8 translations with defense counsel.

9 a. On December 15, 2022 at around 4:40 PM, the prosecution provided the
10 defense with a 45-page sentencing memorandum via email. The same brief
11 was filed by the prosecution with the Court on or about December 16, 2022.
12 Among the prosecution's 45-pages of initial briefing are a number of pages
13 dedicated to the fourth file referenced above (the video recording of the cell
14 phone/text conversation). Specifically, there are numerous pages in the
15 prosecution's brief in which the prosecution purports to paraphrase and
16 summarize portions of the video-recorded text message thread (the fourth
17 file/the video file previously discussed). However, there are apparently no
18 verbatim excerpts from the conversation (just the prosecution's summaries
19 of select portions) and the prosecution neither attached to its sentencing
20 brief nor did the prosecution provide the defense with a translated
21 transcript (or even a Spanish language transcript) of the video-recorded
22 text message conversation the prosecution is presenting to the Court in its
23 briefing – the transcript and translations from which the prosecution
24 apparently prepared its summaries contained in their briefing. And, there
25 is no indication as to the identity or qualifications of the person or persons
26 who prepared the prosecution's transcripts and conducted the translations
27 upon which DDA Wise prepared her summaries/paraphrasing (those which
28 are included in the prosecution's initial sentencing brief). Although the

1 video file is a unique/uncommon method of presenting and preserving a
2 text message exchange, the prosecution appear to potentially be out of
3 compliance with Cal. Rule of Court 2.1040(b) in their failure to provide an
4 accompanying transcript to the Court or counsel [... *“before a party may*
5 *present or offer into evidence any electronic sound or sound-and-video*
6 *recording not covered under (a), the party must provide to the court and to*
7 *opposing parties a transcript of the electronic recording”...*]. The
8 prosecution’s inclusion of these summaries in their initial sentencing brief
9 makes clear that the defense needs to fully review, transcribe, and
10 translate the original file in order to verify the accuracy of the prosecution’s
11 selective summaries and respond to the prosecution’s apparent contextual
12 inferences drawn from the text message conversation. This is a time-
13 consuming process, given the method in which law enforcement captured
14 this evidence and the format in which it was preserved and provided to the
15 defense, as described.

16 b. In the prosecution’s sentencing brief, the prosecution also makes reference
17 to various jail calls/recordings by way of the authoring prosecutor’s
18 summaries/paraphrasing of such calls. Again, the prosecution apparently
19 failed to adhere to Cal. Rule of Court 2.1040(b) in presenting and
20 referencing jail calls/recordings in its Court filed briefing, without
21 including transcripts of the recordings.

22 (18) Before selecting the specific expert whose evaluation of Ms. Ramirez is
23 scheduled for January 11, 2023, I spent a great deal of time researching various
24 potential candidates to serve as the defense’s retained expert. I consulted with
25 other attorneys and interviewed/consulted with various professionals in finding
26 (and seeking and obtaining approval) to use this specific expert. And, even after
27 settling on this specific expert, as I stated in my December 16, 2022 email to the
28 Court and counsel, *“Given the prosecution's sentencing strategy and my strategy, I*

1 *cannot give my retained expert the green light to proceed with his portion of the*
2 *process until this jail call and video review/transcription process finish up, being*
3 *that the contents of those materials will be provided to my expert in advance of his*
4 *meeting with Ms. Ramirez.”* Although the transcription and translation of the
5 video file is still in progress, my understanding is that the transcriber/translator
6 will be providing the completed transcript to me (so that I can provide it to the
7 expert) prior to the expert’s January 11, 2023 evaluation of Ms. Ramirez.

8 (19) Upon completion of the evaluation by the retained expert, my understanding is
9 that it will take additional time for the expert to prepare and provide his report
10 to the defense. I have advised the expert of the time sensitive nature of this
11 matter and have stressed the need to complete all aspects of this work in the
12 shortest amount of time possible (without compromising the quality of the work
13 product, without narrowing the intended scope of the evaluation, and without
14 deviating from this expert’s standard report preparation process).

15 (20) On December 26, 2022, I received a number of reports from a defense retained
16 investigator, which I am in the process of reviewing for potential inclusion in my
17 sentencing memorandum/briefing. There is additional work by the same defense
18 investigator that is still in progress, which may be used in my sentencing
19 brief/memorandum once the investigator’s work concludes.

20 (21) Based upon the totality of the circumstances, it is my good faith belief that I
21 have exercised the requisite level and type of due diligence in preparing for Ms.
22 Ramirez’s sentencing, but presently, given that a number of components of this
23 process are still in progress due to circumstances outside my control and outside
24 of my client’s control, I am not yet prepared to proceed with sentencing. Further,
25 pursuant to California Penal Code §1050, and pursuant to the applicable
26 authorities cited and referenced herein, it is my good faith belief that there is
27 more than enough true and accurate information for this Court to make a good
28

1 cause finding and accordingly, grant the accompanying motion/request to
2 continue Ms. Ramirez's sentencing hearing.

3 (22) As such, I am respectfully requesting that the Court make findings, as follows:

4 (1) that defense counsel has exercised due diligence in preparing for Ms.
5 Ramirez's sentencing hearing, (2) that good cause exists to warrant and justify
6 the Court's granting of the accompanying motion, and (3) that the Court grant
7 this motion to continue the sentencing date in this matter to a future date (to be
8 determined if/when this Court hears and grants this motion/request on January
9 13, 2023).

10
11 I hereby declare under penalty of perjury under the laws of the State of California that I
12 have read the foregoing Declaration and know its contents. The same is true of my own
13 personal knowledge, except for those matters stated on information and belief, which I
believe to be true. If called to testify as a witness, I could do so competently. Executed on
January 9, 2023 @ 2147hrs at Santa Clara County, California.

14
15 Respectfully Submitted,

16 THE SALFEN LAW FIRM
17 A Professional Law
18 Corporation

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CODY B.K. SALFEN, ESQ.
[Electronically Signed on Jan. 9, 2023 @ 2148hrs]

CODY B.K. SALFEN, ESQ.
Counsel for Yesenia Ramirez

PROOF OF SERVICE

STATE OF CALIFORNIA)

Court Case No. C2204867

COUNTY OF SANTA CLARA)

I am a citizen of the United States and am employed in the County aforesaid; I am over the age of eighteen years and not a party to this action; My business address is: 111 N. Market Street, Suite 300, San Jose, CA 95113.

On January 9, 2023, I served the copy of this (unfiled) motion on the Plaintiff and other interested parties in this action, by personally serving a true and correct copy, as follows: **email sent on 09-JAN-2023 @ approx. 2152hrs

**TO: THE OFFICE OF THE DISTRICT ATTORNEY
SANTA CLARA COUNTY**
Attn. Deputy District Attorney Rebekah Wise
(Via Email to rwise@dao.sccgov.org)

**TO: THE PROBATION DEPARTMENT FOR
THE COUNTY OF SANTA CLARA**
(Via Email to pro-postmotions@pro.sccgov.org)

TO: CO-DEFENDANT JOSE ROMAN PORTILLO
Attn. Deputy Alternate Defender Karri Iyama
(Via Email to karri.iyama@ado.sccgov.org)

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

Executed on January 9, 2023 (at approx. 2154hrs), at Santa Clara County, California.

THE SALFEN LAW FIRM
A Professional Law Corporation



CODY B.K. SALFEN, ESQ.
[Electronically Signed on Jan. 9, 2023 @ 2154hrs]

CODY B.K. SALFEN, ESQ.
Counsel for Defendant Yesenia Ramirez