

MACIAS CASE EXPERT WITNESS DECLARATION

The following is the text of the expert witness declaration in the case of Macias vs. Sheriff Mark Ihde et al (sometimes, as in this document, referred to as Macias v Deputy Mark Lopez)

On April 15, 1996 Maria Teresa Macias was shot and killed by her estranged husband Avelino. In the year and a half before her death, Teresa had contacted the Sheriff on more than 22 occasions for help dealing with the domestic violence and sexual abuse being perpetrated by her husband against herself and her children. The Sheriff's Department brushed Teresa off at every turn.

In October 1996, the Macias family filed a \$15 million federal civil rights wrongful death lawsuit against the Sonoma County Sheriff's Department. The lawsuit claimed that the Sheriff's Department discriminatory disregard in responding to Teresa's many calls for help was a contributing cause of her death. The suit claimed that the Sheriff's Department discriminated against Teresa as a woman, as a victim of violence against women, and as a Latina.

The following expert witness testimony by ret. San Diego Police Sgt. Anne O'Dell is an analysis of law enforcement response to fourteen Macias calls for help that were made in the last three months of Teresa's life. These calls dealt with Avelino's stalking, violation of restraining, and threats to kill. It's important to keep in mind that Macias had previously reported Avelino's sexual abuse of the children and his years of beatings to the Sheriff, and as such the Sheriff's Department had this history available to them when responding to later calls. The same sheriff substation had also responded six years before when Avelino shot a man through the head.

Ret. Detective Sgt. Anne O'Dell along with Casey Gwinn of the San Diego City Attorney's Office pioneered what has now become the model for modern law enforcement response to domestic violence. The detailed protocols developed by O'Dell and Gwinn in the early 1990's marked the beginning of a radical shift away from law enforcement handling of domestic violence as 'a family affair' to dealing with domestic violence as serious violent crime. As O'Dell cites in her declaration to the Macias court, a number of cities throughout the country whose police and district attorney have adopted these protocols have seen as much as a 60% reduction in the domestic violence homicide rate in just a matter of years. The results are incontrovertible. Domestic violence homicide can be prevented if police and district attorneys do their jobs! O'Dell's analysis of Sonoma County Sheriff Department response to the final 14 Macias calls in the last three months of her life makes painfully clear that the murder of Teresa Macias should have been prevented too. In March 1999, 9th District Court Judge Jensen dismissed the Macias case because he could not find "a direct causal link" between the Sheriff's response and the murder of Teresa Macias. This decision is now being appealed to the 9th Circuit Court of Appeals.

RICHARD A. SELTZER (SBN 092317)
CHRISTOPHER T. CODY (SBN 111464)
ANN M. HANSEN (SBN 122951)
SELTZER & CODY
180 Grand Avenue, Suite 1300
Oakland, CA 94612
Telephone: 510-893-6622
DENNIS CUNNINGHAM (SBN 112910)
3163 Mission Street
San Francisco, CA 94110
Telephone: 415-285-8091

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF MARIA TERESA MACIAS,) Case No. C-96-03658-DLJ

et al.,)

Plaintiffs,) DECLARATION OF ANNE

) O'DELL IN

)) SUPPORT OF PLAINTIFF'S

v.)) OPPOSITION TO DEFENDANTS'

)) MOTION FOR SUMMARY

) JUDGMENT

DEPUTY SHERIFF MARK LOPEZ,)

et al.,) Date: December 23, 1998

) Time: 10:00 a.m.

Defendants.) Ctrm: #1

_____)
I, Ann O'Dell, declare as follows:

1. I am a retired detective sergeant with the San Diego Police Department. I have twenty years experience in law enforcement. During this time I worked on over seventy thousand domestic violence and stalking cases. I have attended and/or taught at over three hundred conferences on domestic violence and stalking. I am currently an Adjunct Professor for the University of Houston's National College of District Attorneys and the California District Attorney's Association. I teach primarily in the area of law enforcement's role in domestic violence and stalking cases. I recently wrote an article "Preventing Domestic Violence Homicides" which was published in Police Chief Magazine in February of 1996. Attached is a copy of my Curriculum Vitae.

2. I was retained by the Plaintiffs to provide expert testimony in this matter and in connection therewith I have reviewed Maria Teresa Macias's diary and other writings, depositions of the deputy sheriffs and independent witnesses involved herein, and other related pleadings and documents including the Sonoma County Sheriff General Order regarding Domestic Violence.

3. As a result of my review of these materials, I became aware of the following contacts between the Sonoma County Sheriff and Maria Teresa Macias and Avelino Macias. I also became aware of the following criminal activities of Avelino as observed and reported by independent witnesses to the Sheriff. As is explained below, it is my opinion that during the course of responding to these contacts and, in addition, the receipt of reports of illegal activities by Avelino Macias, the Sonoma County Sheriff **repeatedly** failed to follow and observe numerous provisions of the then existing State of California Penal Code as well as its own Department General Orders regarding the handling of domestic violence incidents.

Long gone are the days when the criminal justice system has to "speculate" on how and why people are murdered. We in law enforcement know that there is at least one category of homicide that is preventable: domestic violence homicide. The proof is in the numbers and statistics of scores of studies conducted in cities and counties all over the United States: In Quincy, Mass., a city with a nationwide reputation for violations of restraining orders consistently getting the offender time in custody in order to send a message that court orders are to be obeyed, there has only been one chargeable domestic violence homicide in the last 11 years. Nashville, Tennessee, figures show that domestic violence homicides decreased by over 60% after aggressive law enforcement and judicial intervention began. San Diego, California, statistics demonstrate that aggressive law enforcement practices resulted in domestic violence homicides being less than 50% of what they were in 1990. With thorough reporting, arrest and treatment, Seattle, Washington saw the numbers of domestic violence homicides go from 16 to 3 inside of two years of the new program.

Conversely, we also know that to issue restraining orders to victims but then fail to enforce them renders them worthless and puts the victim at even more risk. This was recently recognized in a fatality review study in the state of Florida. The existence of a restraining order which is not enforced tells the restrained person who routinely violates it that it is worth nothing and consequently neither is the victim. This is the precise scenario which developed in the Macias case.

a.. By failing to reasonably respond to the first incident the Sonoma County Sheriff violated the provisions of Penal Code §13730 regarding the reporting of domestic violence incidents and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On January 21, 1996 a 911 telephone call was placed at 16:10 hours by Maria Teresa to the Sheriff. She reported that she was separated from her husband and that her husband was just at her apartment where he had forced his way in. Maria Teresa requested a police officer respond and that a report be done.

According to the Sheriff's CAD printout the responding officer is identified as Brad O'Bryan #586.

Documentation Sheriff's 911 CAD printout bate stamp COS 0270.

Explanation of possible action and actions taken: Officer O'Bryan has testified that this type of call concerns a domestic report. That he considered, and discussed with Maria Teresa, arresting Avelino for disturbing the peace and trespassing. That this appeared to be a family fight and that he also discussed with Maria Teresa her obtaining a restraining order against Avelino. *Documentation Deputy O'Bryan deposition 23:24-25:4, 31: 3-15, 31:16-32:11.* According to Maria Teresa's diary, on the evening in question, Avelino forced himself into the apartment, Avelino screamed insults at Maria Teresa and her mother. *Documentation Maria Teresa's Diary entry of 1/21/96.* Teresa's therapist and counselor, says that Teresa described the incident as follows:

...I remember her saying that the children were crying and screaming. Avelino, Jr. was running around trying to find a place - maybe even going under the bed and hiding there. Claudia and Juan trying to get him out from under the bed, and that he was very scared, and that she was doing her best to calm the children and keep herself in a state of being able to deal with this. But it was very chaotic and - I guess 'violent' would be the word.

(Palacios-Flaherty Depo. 31:18-33:3)

The counseling agency that monitored the family in connection with the children's removal from the home described the incident as "terrorizing" to Maria Teresa and the children in its February 1996 report to the family's social worker:

Prior to the visits resuming in Sonoma and just when the father returned from Mexico, he (the father) went to the home of the mother on the weekend when the children were there visiting. He terrorized the family by trying to force his way into the house. This event set a negative beginning to the supervised visits that began in a home setting with the father.

(Ex. 4 to Palacios-Flaherty Depo. HSD 0571)

The law defines "domestic violence" to include situations where a separated spouse intentionally or recklessly causes or attempts to causes bodily injury or places another person in reasonable apprehensions of imminent serious bodily injury. The forceful break-in of a residence by an estranged spouse involving screaming which then results in an emergency call by the victim to law enforcement, constitutes a domestic violence call.

The Sonoma Sheriff Department personnel violated both State and County law in responding to this incident and failing to prepare a report. As a domestic violence incident it was mandatory under both Penal Code §13730 and the Sonoma County Sheriffs General Orders regarding Domestic Violence, that the Sheriff's deputy prepare a domestic violence incident report. Such a report must, at a minimum, include a written narrative of the incident with identification of witnesses and their statements regarding the incident. In a domestic violence incident such as this, it was also **mandatory** under the Penal Code that Maria Teresa be advised by the deputies that she had the right to make a citizen's arrest and advised how this could safely be done. *Documentation Penal Code §13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006; Penal Code §836(b).*

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b. By failing to reasonably respond to the second incident the Sonoma County Sheriff violated the provisions of Penal Code §13730 regarding reporting of domestic violence incidents.

On January 23, 1996 Avelino followed Maria Teresa to one of her house cleaning jobs in Glen Ellen, California. Maria Teresa's employer, Helena Duffy, observed Avelino inside the employer's garage. At Maria Teresa's request, Duffy confronted Avelino and told him to leave. According to Duffy, Avelino became "menacing" and became angry and made threats against Maria Teresa. Duffy became frightened and she observed that Maria Teresa was also frightened and agitated. Maria Teresa said she was calling the police. Avelino left the scene without any further problem. The Sheriff did eventually return Maria Teresa's phone call and left a message for her on the homeowner's message machine.

Sheriff documents reveal that they were called about this incident. A sheriff's deputy attempted to respond to the call but could not find the home where Duffy lived. *Documentation Duffy deposition 12:9-15:8; Sheriff CAD printout bate stamp COS 0271*

Explanation of possible action and actions taken: This is a domestic violence call under the applicable laws. This was also a priority 2 (very high as the suspect was on scene), yet after the deputy could not find the location, he apparently gave up. This is unacceptable. The deputy was required to find the home, with the assistance of others if necessary, and he was required to prepare a thorough incident report reflecting what went on at the Duffy residence. The report should have included Duffy's eyewitness observations regarding Avelino. The failure to prepare a report is a violation of State and local law. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.*

c. By failing to reasonably respond to the third incident the Sonoma County Sheriff violated the provisions of Penal Code §13730 regarding reporting and §836(b) regarding private arrests; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On January 23, 1996, at 20:37 hours, a witness placed a 911 call to the Sheriff. The witness, a mutual friend of the Macias named Marty Cabello, reported that Maria Teresa had obtained a TRO against her husband Avelino, who had his car pulled in the driveway behind his wife's car and was refusing to move the car and allow Maria Teresa to leave. At the scene of the incident, the responding Deputies confirmed the TRO and according to the CAD report, "verbally" served Avelino with it. The Deputies ordered

Avelino to move his car and left the scene without making sure he followed their order. *Documentation Sheriff's 911 CAD printout, bate stamp COS 0272.*

The subject TRO documents Avelino's recent past history of domestic violence against Maria Teresa and her children, and threats against Sara Hernandez. The TRO states, in part, that Avelino had repeatedly stalked Maria Teresa, that Avelino has physically forced her to masturbate him, that Avelino has threatened to kill her mother and other members of her family, and that she is in great fear of being physically harmed by Avelino. *Documentation Temporary Restraining Order dated January 15, 1996.* Marty Cabello was the apartment manager where this incident happened. Maria Teresa was visiting her at the time of the incident. She recalls that Maria Teresa asked her to call the Sheriff. She described Maria Teresa as looking like a "little wounded animal" that night. She states that Maria Teresa appeared "very, very petrified". **Maria Teresa also told the Sheriff this evening that Avelino was threatening to "kill her."**

Documentation Deposition of Marty Cabello 159:6-160:9, 598:7-25

Explanation of possible action and actions taken: There is no question that this is a domestic violence incident under the law. This couple is separated and a TRO is in existence. Marty Cabello's description of Maria Teresa describes the level of fear she had of Avelino at the time. Marty Cabello also believed that Maria Teresa's life was in danger, and, in her own words, that Avelino was "a piece of dynamite" capable of killing Maria Teresa. Cabello told the deputies that Avelino "was following Maria Teresa and watching her all the time". *Documentation Cabello deposition 454:10-13.*

The deputies who responded to this call were "out of service" only 23 minutes. This is an absurdly brief amount of time for a call of this nature. The deputies cannot possibly investigate the circumstances of this call and interview and document witness statements in this amount of time. They cannot enforce the law in this amount of time. This is the type of response law enforcement provided 25 years ago and why state law and the Sonoma County General Orders were strengthened in the first place. In my opinion the deputies "dumped this call" by failing to follow their own department policies.

The Sonoma Sheriff Department personnel violated both State and County laws in responding to this incident. As a domestic violence incident, with a TRO in existence, it was **mandatory** under both Penal Code §13730(c) and the Sonoma County Sheriff's General Order regarding Domestic Violence, that the Sonoma County Sheriff prepare an official domestic violence incident report. Such a report must, at a minimum, include a written narrative of the incident with identification of witnesses and their statements regarding the incident. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.* In a domestic violence incident such as this, it was also **mandatory** under the Penal Code and the Sheriff's General Order that Maria Teresa be advised by the Deputies that she had the right to make a citizen's arrest and advised how this could safely be done. *Documentation Penal Code Section 836 (b) Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.*

Finally, by the time of this incident it is clear that Avelino is engaged in repeated stalking in violation of Penal Code §646.9. This code section states, in part, that "any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking". The break-in incident on January 21, 1996 was known to the Sheriff's Department. The Sheriff could and should have easily known of the documented stalking incidents of December 1995 which are enumerated in the TRO. Thus, even a cursory interview of Maria Teresa and Marty Cabello would have provided the deputies with this stalking information and the necessary context to recognize Avelino's pattern of stalking.

The felony stalking statute of this state does not specify a certain number of incidents before an arrest can be made. Rather, law enforcement is required to investigate whether or not a pattern of behavior is apparent. There is no requirement that the victim be assaulted. Under these circumstances, especially

given that the TRO is unquestionably in effect and is being violated, the deputies should have executed the arrest of Avelino Macias on the TRO at a minimum and they had a strong case to arrest him on stalking. *Documentation Penal Code Sec. 646.9 and Sonoma County Sheriff's General Order 2.b) page 2 and 3, COS bate stamp 0002-0003.*

d. By failing to reasonably respond to the fourth incident the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and Penal Code §836.b regarding private arrests; and the Sonoma County Sheriff's General Orders regarding Domestic Violence §2.b. and 2.c and provisions regarding arrest for violations of restraining orders.

On January 23, 1996, approximately 20 minutes after the sheriff deputies had left the scene of the prior incident involving the Macias, Marty Cabello once again placed a 911 call to the Sheriff. The CAD printout indicates that the Deputies were just out and verbally served the TRO on Avelino. Maria Teresa's car was still blocked. At 2151 hours, the CAD printout indicates that "subj was served with TRO". *Documentation Sheriff's 911 CAD printout, bate stamp 0273.*

Explanation of possible action and actions taken: Avelino has now refused to follow a direct order of the deputies which has necessitated a second response to the scene of the incident. This should only have served to highlight further the seriousness of this particular domestic violence incident. Under the circumstances, Avelino absolutely should have been arrested for stalking. *Documentation Penal Code Section 646.9 and. Sonoma County Sheriff's General Order 2. b. page 2 and 3, bate stamp COS 0002 and 0003.*

Avelino is present during this incident and there are reasonable grounds to believe he has committed a number of misdemeanors, including violating the TRO and disobeying a direct order of an officer. Given the circumstances and history, Avelino should have been arrested under the provisions of Sheriff's General Order. *Documentation Sonoma County, Sheriff's General Order 2.c, bate stamp 0003: Deputies shall make an arrest when there is reasonable cause to believe that a misdemeanor (including violations of court orders) occurred in the deputy's presence; and "Arrest criteria and enforcement procedures regarding restraining orders" with sec. 4, bate stamp 0004 and 0005.*

Further, on this call the deputies are "out of service" a mere 31 minutes. An officer cannot do a proper investigation and documentation of a crime incident in 31 minutes. This is another example of the officers "dumping" a domestic violence call. As another domestic violence incident, with a TRO in existence, it was **mandatory** under both Penal Code sec. 13730(c) and the Sonoma County Sheriff's General Order regarding Domestic Violence, that the Sonoma County Sheriff prepare an official domestic violence incident report. Such a report must, at a minimum, include a written narrative of the incident with identification of witnesses and their statements regarding the incident. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6 bate stamp COS 0005 and 0006.* In a domestic violence incident such as this, it was also **mandatory** under the Penal Code and the Sheriff's General Order that Maria Teresa be advised by the Deputies that she had the right to make a citizen's arrest and advised how this could safely be done. *Documentation Penal Code Section 836 (b) Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.*

e. By failing to reasonably respond to the fifth incident the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and Penal Code §836.b regarding private arrests; and the Sonoma County Sheriff's General Orders which requires a thorough investigation to determine whether arrest is appropriate for violation of an existing protective order.

On January 31, 1996 at 20:36 hours, a 911 call is placed to the Sheriff. The CAD printout confirms the existence of Maria Teresa's **TRO** against Avelino. The call concerns the "violation of court order". Deputy Mark Lopez #641 responded to the call. *Documentation CAD print out bate stamp COS 0274.*

Explanation of possible action and actions taken: Deputy Lopez is "out of service" just 21 minutes in responding to this call. Again a law enforcement officer cannot properly investigate and document a crime in this brief period of time. As a result, only a one page incident report was prepared by Deputy Lopez. *Documentation Report #960131-58*. The report indicates it concerns the violation of restraining order and references Penal Code Section 166.4. According to Lopez's report, Maria Teresa reported a series of violations of the TRO as well as stalking incidents. For example, she reported that her ex-husband had been attempting to contact her by telephone and was coming by her residence. Maria Teresa's roommate, Monica Armstrong, testified that she would see Avelino in front of the apartment watching them, walking and driving by the apartment. *Documentation: Armstrong Depo. 21:3-22:25; 138:10-24; 23:10-24:7.137:2 138:9*. Lopez's report identifies Armstrong as a witness to some of these violations. Copies of the restraining order were presented to Lopez. Maria Teresa requested a complaint be filed against Avelino for violating the order. *Documentation Report #960131-58*.

Even though Avelino had left the scene, pursuant to the Sheriff's own General Order, Deputy Lopez was **required** to conduct an investigation into this incident "to determine if a crime has been committed."

Documentation Sonoma County' Sheriff's General Order page 4 and 5, bate stamp COS 0005

However no such investigation was ever performed by Lopez. Rather, according to his report the only thing Lopez did was to contact Avelino by telephone. Avelino denied to Lopez that he had violated the order. However, Avelino's statements have been repeatedly contradicted by a number of people who state they were eye witnesses to Avelino's criminal activities. *Documentation Monica Armstrong Deposition 21:3-22:25; 1 38:1 0-24; 23:10-24:7; 137:2-138:9. Marty Cabello Deposition 170:25-173:2 and 175:6-178:10. Sarah Hernandez Deposition 44:10-47:18. Helena Duffy Deposition 12:24-15:8*.

Significantly, this is the fourth separate occasion that the Sheriff's Department has been presented with a documented incident of **continued stalking** by Avelino. Moreover, the TRO which Lopez saw lists additional incidents of Avelino's stalking of Maria Teresa in December 1995. These incidents include a history of physically forcing Maria Teresa to masturbate him, and his threats to physically harm, and even kill, Maria Teresa's mother and other family members. Under these circumstances, the deputy was required to arrest Avelino for felony stalking pursuant to Penal Code Section 646.9. The evidence is overwhelming that Avelino has been engaged in "harassment", that is, the "knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person".

Documentation Penal Code Section 646.9(e).

Furthermore, as another domestic violence incident, with a TRO in existence, it was **mandatory** under both Penal Code §13730(c) and the Sonoma County Sheriff's General Order regarding Domestic Violence, that the Sonoma County Sheriff prepare an official domestic violence incident report. Deputy Lopez's one-page report which contains no witness interviews whatsoever, does not satisfy the legal requirements. Such a report must, at a minimum, include a written narrative of the incident with identification of witnesses and their statements regarding the incident. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006*.

In a domestic violence incident such as this, it was also **mandatory under** the Penal Code and the Sheriffs General Order that Maria Teresa be advised by the Deputies that she had the right to make a citizen's arrest and advised how this could safely be done..

Documentation Penal Code Section 836 (b) Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS --5 and 0006.

f. By failing to reasonably respond to the sixth contact with the victim, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §836.b regarding private arrests; and the Sonoma County Sheriff's General Orders which requires a thorough

investigation to determine whether arrest is appropriate for violation of an existing protective order.

On February 21, 1996 at approximately 2245 hours, Maria Teresa and Marty Cabello went to the Sonoma County Sheriff Department Substation in the Sonoma Valley to report continuing domestic violence incidents, including continuous stalking violations of the protective order, and threats by Avelino to kill Maria Teresa and her mother.

Explanation of possible action and actions taken: A CAD printout and a report by Deputy Deffenbaugh #592 documents this visit. The deputy's report classifies the incident as one of "domestic violence". The body of the report refers to two incidents of Avelino following Maria Teresa, once to school and once to church. The report states that Maria Teresa told Deffenbaugh that the restraining order was recently extended for one year; however the Sheriff's Department claims it was unable to find this documentation due to a clerical error. Marty Cabello is listed as a witness to the incidents in the report. However, no written witness statement was included in the report. *Documentation CAD printout bate stamp 0276 and Incident report #960221-60. Deposition of Marty Cabello deposition 222:5-25,* Two statements by Maria Teresa in Spanish are attached to report #960221-60. The first statement details the incident at school with the flowers. The second statement details Avelino followed Maria Teresa to a bingo game, then a 7-11 store, and then at about 10:30 she and Marty "went to the police station". The statement goes on to indicate that Avelino followed them to Marty's home and stopped her from leaving Marty's home. The statement goes on to indicate that she saw Avelino again in the neighborhood and then later he left her a letter when he took her car on 2/6/96 *Documentation Incident Report #960221-60.*

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Deputy Lopez has testified that he was present at the substation for a portion of the time Marty Cabello and Maria Teresa were reporting Avelino. Importantly, Lopez states that he told Deputy Deffenbaugh about his prior domestic violence report in this case. *Documentation Lopez Depo. 107:12-108:8.*

Additional context regarding this case was provided by both Cabello and Maria Teresa. Both told the reporting deputy that Avelino's stalking and criminal behavior, including his threats to kill, were "escalating". *Documentation Cabello Depo 222:3-25, 233:16-24.*

Many of the incidents of Avelino's continued stalking of Maria Teresa, as verbally expressed by Maria Teresa and Marty Cabello and as set forth in Maria Teresa's attached statements did not find their way into the body of the crime report. This is another example of the Sheriff dismissing and minimizing the reports of the victim in this case. It is another example of grossly inadequate work by the Sheriff.

The Sheriff's handling of this contact also violated the following Penal Code Sections as well as its own General Order regarding domestic violence. First, the incident report and the attached statements in Spanish evidence a continuing pattern of felony harassment and stalking by Avelino.. As stated in the summary of the preceding incidents, this stalking has repeatedly continued and been repeatedly brought to the attention of the Sheriff over the last months. By this date, Penal Code Section 646.9 certainly

required Deputy Deffenbaugh to institute actions to arrest Avelino for felony stalking. The Sheriff's General Order includes this very same requirement: "2. b. Deputies shall make an arrest when there is reasonable cause to believe that a felony has been committed". *Documentation Penal Code Section 646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003*

In addition, the TRO was in effect at the time of the February 14, 1996 incident which Maria Teresa related to the deputy. This incident was a clear violation of the TRO and is a misdemeanor under either Penal Code Sections 273.6 or 166.4. Under the terms of the Sheriff's General Orders. The deputy **was required** to institute an investigation to determine if a crime was committed and a report concerning said investigation must be done. The deputy did not institute any type of investigation and no such report of this incident was done *Documentation Sonoma County Sheriff's General Order page 5, bate stamp COS 0005.*

In addition, in a domestic violence incident such as this, it was also **mandatory** under the Penal Code and the Sheriff's General Order that Maria Teresa be advised by the Deputies that she had the right to make a citizen's arrest and advised how this could safely be done. *Documentation Penal Code Section 836 (b) Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006*

g. By failing to reasonably respond to the seventh contact with the victim, the

Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and Penal Code §836.b regarding private arrests, and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On February 23, 1996 at 1900 hours, Maria Teresa once again went to the Sheriff's Sonoma Valley substation to once again report domestic violence incidents including incidents of harassment and stalking by Avelino..

Explanation of possible action and actions taken: A supplemental report of this contact was prepared by Defendant Lopez, (Supplemental Report #960221-60.) Maria Teresa reported that Avelino came up to her at a grocery store and asked to speak with her. She reported she became frightened and immediately got into her car and drove away. The report goes on that Avelino phoned Maria Teresa at her apartment later that evening and that Monica Armstrong was a witness to this. Maria Teresa told the deputy that she had already filed two separate criminal complaints against Avelino for violating the Restraining Order and that she wanted to file another report.

It is important to understand that Deputy Lopez has personal knowledge by this date of literally a score or more violations of the TRO and Protective Order, however even more importantly, Lopez has been told of repeated and escalating stalking by Avelino which had been confirmed by an eyewitness: Lopez had previously reviewed the TRO which documented stalking, physical and sexual abuse, and threats to kill and attached a copy to his first report in this case *Documentation Armstrong Depo. 27:22-28:10*; in responding to the January 31st call for assistance Lopez was told of Avelino's attempts to contact Maria Teresa by phone and his coming by her residence, *Documentation Sonoma County Incident Report #960131-58*. On February 21st Lopez was present at the substation when Cabello and Maria Teresa were reporting additional stalking incidents and violations of the TRO. In fact, Lopez recalls translating some of the information Maria Teresa was providing *Documentation Lopez Depo 107:14-108:19*. Finally, Lopez was provided additional written materials by Maria Teresa on February 23rd which report further incidents of stalking and harassment by Avelino *Documentation Sonoma County Incident Report #960131-58*.

Lopez's incident report indicates that the deputy telephoned Avelino who denied all the allegations. Lopez reports he told Avelino that "this was the third complaint" about his behavior and "it would be in his interest to stay away from his ex-wife because there are witnesses that are corroborating her story". This is totally unprofessional behavior on the part of Deputy Lopez. The deputy is giving Avelino a "heads-up" that there is mounting evidence that he is continuing to break the law. Law enforcement officers do not call-up a burglar and give him or her verbal warnings that they should stop because this is the third documented incident of a criminal behavior. It is not a stretch to state that at this point of time Deputy Lopez is "aiding and abetting" Avelino Macias in this continued pattern of stalking Maria Teresa. Deputy Lopez is not enforcing the law and not upholding the public trust.

Even given his stubborn refusal to investigate and arrest Avelino, even Deputy Lopez recognizes by this point in his report that the District Attorney possibly consider filing stalking charges against Avelino Macias. *Documentation Supplemental incident report #960221-60* (The Sonoma County District Attorney claims not to have received copies of Lopez's Incident Report and attachments. If accurate, such indifferent reporting only serves to underscore the incompetence and reckless attitude the Sheriff had in the subject case.) *Documentation Diane Rolan Depo. 23: 13~21*.

By this date, given his personal knowledge of the number of different and escalating incidents of harassment and stalking by Avelino, Penal Code Section 646.9 and the Sheriff's General Order section

2.b absolutely **required** Deputy Lopez to institute action to arrest Avelino for felony stalking. The Sheriff Department has now been told of repeated incidents of stalking, threats to kill and other types of harassment. Many of these incidents have been confirmed by independent witnesses Marty Cabello and Monica Armstrong. There is "reasonable cause" to believe that Avelino has engaged in repeated felony stalking and arrest is absolutely warranted. *Documentation Penal Code Section*

646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003.

In addition, in a domestic violence incident such as this, it was also **mandatory** under the Penal Code and the Sheriff's General Order that Maria Teresa be advised by the Deputies that she had the right to make a citizen's arrest and advised how this could safely be done. *Documentation Penal Code Section 836 (b) Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006*

h. By failing to reasonably respond to the eighth contact with the victim, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On February 23, 1996 at approximately 11:00p.m., Maria Teresa called to report that Avelino had again phoned her home.

Explanation of possible action and actions taken: The sheriff dispatcher contacts Deputy Mark Lopez. Lopez then tells the dispatcher that "I can't keep filing a report every time she calls...". The deputy concludes by telling the dispatcher he will get back to Maria Teresa when he has time. *Documentation Defendant's translation of Sheriff 911 tape.*

Once again. Maria Teresa is reporting Avelino's obsessive stalking and harassment. A felony stalking investigation and arrest are required. *Documentation Penal Code Section 646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003.* However much Deputy Lopez may think he is being overworked, this is a domestic violence call and it is mandatory that a report of the incident be prepared. Once again however, no such report was prepared. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.*

i. By failing to reasonably respond to this ninth contact with the victim, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and Penal Code §836.b regarding private arrests; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On February 28, 1996 a witness sees Avelino and a companion attempting to break into Maria Teresa's vehicle which is parked outside a residence where she is employed as a housekeeper.

Explanation of possible action and actions taken: The Sonoma Sheriff was called and Sheriff's Deputy Hansen responded to the call. He spoke with the neighbor who told him of the incident and explains that Avelino has left the scene. As the deputy began to leave the area Maria Teresa approached him and told him there was a problem between her and her husband, that Avelino was following her to her jobs and yelling at her. The deputy told Maria Teresa he would check the area for Avelino. The deputy found Avelino a block or two away from the incident. The deputy told Avelino to leave Maria Teresa alone. Deputy Hansen stated in his deposition that he saw the message "got through" to Avelino. *Documentation Alice Shimm Deposition 7.15 9.11; Deputy Hansen deposition 5.19-7.4.10:19-11:15.*

This is a domestic violence call. A full narrative report of the incident was required. However, no such report was done. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriffs General Order page 5 and 6, bate stamp COS 005 and 006.*

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In addition, the deputy is observing a continuing pattern of stalking by Avelino. This is another stalking incident. A communication with dispatch would have informed the deputy that this was a well known case with a lengthy history of domestic violence, stalking, harassment, and violations of a protective

order. Under the circumstances, an arrest for felony stalking was required. *Documentation Penal Code Section 646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003.* Finally, the deputy was required to advise Maria Teresa that she had the right to initiate a private arrest of Avelino based on his harassment. *Documentation Penal Code Section 836 (b) Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.*

j. By failing to reasonably respond to the tenth contact with the victim, and reported violation of law by Avelino Macias, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On March 1, 1996 at 18:38 hours Maria Teresa, with assistance from her roommate, Monica Armstrong, called the Sonoma Sheriff Department regarding Avelino's attempted break-in into Maria Teresa's car.

Explanation of possible action and actions taken: There followed discussions about Maria Teresa's protective order against Avelino. A check found that the TRO had expired on February 15, 1996 and the department, mistakenly, had no record of any further protective order. However, there is significant evidence that a copy of the protective order was delivered to the Sheriff substation and that the officers there knew of the protective order. *Documentation Cabello depo. 245:21-247:6, 294:7-25, 666:19-667:8* Maria Teresa was requested to come to the substation. *Documentation CAD printout COS 0279 and Defendant's translation of 911 tape.*

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This is a domestic violence call. A full narrative report of the incident was required. However, no such report was done. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006.*

In addition, this is another attempt by the victim of domestic violence to communicate with the Sheriff that there is a history of domestic violence, stalking, harassment, and violations of a protective order in this case. Under these circumstances, an arrest for felony stalking was required. *Documentation Penal Code Section 646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003.*

k. By failing to reasonably respond to the eleventh, twelfth, and thirteenth contact, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On three occasion after Marty Cabello visited the Sonoma County Sheriff substation on February 21, 1996 with Maria Teresa in order to report Avelino's stalking, and violations of the TRO, Marty Cabello telephoned the Sheriff. Cabello states she called the Sheriff in order to make further domestic violence reports regarding Maria Teresa and Avelino.. Marty Cabello states that in the course of these telephone calls to the Sheriff she reported additional stalking and harassment by Avelino. *Documentation Marty Cabello deposition 253:2-257:20 293:1 -294:25 622:21 -625:20.*

Explanation of possible action and actions taken: The information Cabello states she gave the Sheriff in these telephone calls is consistent with Avelino's reported stalking and harassing conduct over the period of time in question. It was mandatory for the Sheriff to prepare a written report reflecting its investigation of each of these three separate domestic violence calls. Each one of these calls should have prompted an investigation and undoubtedly the arrest of Avelino on felony stalking charges. However, the Sheriff did not prepare any reports and the Sheriff did not arrest Avelino and its failure constitutes another violation of existing state and local law. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006; Penal Code Section 646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003*

Ms. Cabello also testified that she accompanied Maria Teresa to the substation some time after the visit of February 21, 1996, during the first week in March, and that Maria Teresa dropped off some papers from a notebook. *Documentation Cabello Depo. 611:2-613:3*. The Sheriff's Department allegedly has no record of receiving these documents.

l. By failing to reasonably respond to the fourteenth contact, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

On March 18, 1996 at 18:47 hours Maria Teresa again called the Sheriff to report Avelino's telephone calls to her apartment.

Explanation of possible action and actions taken: A transcript of this 911 call evidences that Maria Teresa was asked by the dispatcher if Avelino had been violent toward her in the past. Maria Teresa responds: "Mucho!" which is translated for the dispatcher: "Much, very much." The dispatcher searches for a current protective order, and mistakenly, is told there is not one. There is no further response to the call. *Documentation CAD printout bate stamp COS 0280 and Defendants translation of 911 tape* It was mandatory for the Sheriff to prepare a written report reflecting its investigation of this domestic violence call. This call should have prompted an investigation and undoubtedly the arrest of Avelino on felony stalking charges. However, the Sheriff did not prepare any reports, neither did the Sheriff arrest Avelino. This failure constitutes another violation of existing state and local law. *Documentation Penal Code Section 13730(c) and Sonoma County Sheriff's General Order page 5 and 6, bate stamp COS 0005 and 0006; Penal Code Section 646.9 and Sonoma County Sheriff's General Order page 2 and 3, bate stamp COS 0002 and 0003.*

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m. By failing to reasonably respond to the all of the incidents and contact with the victim and witnesses, the Sonoma County Sheriff violated the provisions of Penal Code §646.9 regarding stalking; Penal Code §13730 regarding domestic violence reporting; and the Sonoma County Sheriff's General Orders regarding Domestic Violence.

The Sheriff's Department eventually became "bothered" by the repeated attempts to report Avelino's harassment and stalking. By March they had told Marty Cabello not to keep calling the substation any more. Maria Teresa should document Avelino Macias' harassment and stalking to provide "proof". *Documentation Cabello depo 624:1-626:2 241:16-242:4, 336:20-337:21, 317:25-318:10; 611, Soledad Macias Depo. 60:4-8, 60:28- 61:14*. In response, Maria Teresa began to keep a handwritten record regarding Avelino's illegal activities. She went so far as to tape record his harassing phone calls. *Documentation Cabello depo. 318:21-319:14.*

Explanation of possible action and actions taken: This is incredibly poor law enforcement practice. The Sheriff is abdicating its responsibility to investigate, prepare domestic violence reports, and arrest Avelino where there is clearly probable cause that Avelino Macias is continuing a pattern of felony stalking. Further, the Sheriff's practice in this case is directly contrary to the Penal Code and the Sheriff's own General Order which states, in part, that domestic violence is "a serious crime" and it is the "intent of this department to stress enforcement of the laws to protect the victims." Delegating responsibility for making the case against Avelino Macias to Maria Teresa is not enforcement of the law and is **not** law enforcement practice designed to protect the victim. *Documentation Penal Code Section 646.9 and Sonoma County Sheriff's General Order Sec. A regarding Domestic Violence, bate stamp 0001.*

4. Based on my experience and training and in light of the foregoing facts evidenced in the materials I have reviewed, it is my opinion that the Sheriff's Department's handling of the reports made by Maria Teresa Macias and others was recklessly indifferent, grossly inadequate, incompetent and **repeatedly** violated the existing California Penal Code statutes as well as Sonoma County Sheriff Department General Orders regarding Domestic Violence. In addition, by their dismissal of Maria Teresa's reports of Avelino's harassment and stalking and her concerns for her own life, the Sheriff Department and Deputy

Lopez in particular sent a powerful message to the victim that she was not protected. They sent an equally powerful message to the suspect, Avelino Macias that he could do anything and there would be no sanctions, there would be no consequences.

5. Based on my review of the materials in this case and my experience, training, education, and research the Sheriff's handling of Avelino Macias was recklessly indifferent, inadequate and incompetent and violated then existing California Penal Code statutes as well as Sonoma County Sheriff Department General Orders regarding Domestic Violence. Instead of deterring Avelino's conduct by arresting him for violating the law the Sheriff's actions and omissions empowered and emboldened Avelino Macias came to believe that the Sheriff's Department was on his side and that the Sheriff would never do anything no matter how often, and to what degree he harassed, stalked and threatened Maria Teresa.

Documentation: Deposition of Marty Cabello 162: 19-163:8, 268:23-269:23; Enrique Carmona Hernandez 265:20-266:25; Soledad Macias 20:23-21:2. Avelino came to believe that he was blameless, that his wife was at fault, and that he could continue to harass and stalk Maria Teresa at will.

6. It is my opinion that the Sonoma County Sheriff's Department's acts and omissions were a substantial factor in causing Avelino to continue and escalate his illegal behavior to the point where it was entirely foreseeable that Maria Teresa was in significant danger and that she was absolutely at risk of suffering physical violence at the hands of Avelino Macias. The heart of the problem in this case is that the failures of the Sheriff made this suspect even more dangerous because law enforcement sent the message in so many ways that he could continue his actions and that the life of the victim was expendable. The Sheriff did not use any lethality predictors (pre-incident factors) in spite of the fact that these tools have existed for over ten years. Had the Sheriff's deputies properly investigated and performed any lethality assessment they would have discovered what so many witnesses in the community knew about Avelino at the time: that he had a history of alcohol and drug use, that he had obsessive feelings and beliefs about Maria Teresa, that he had used guns and that guns were available to him, that he expressed feelings that he was in total control and untouchable because there had been no consequences for his actions, that he felt law enforcement was on his side, that he felt betrayed by Maria Teresa because she had been communicating her desire for independence and divorce, that he had been continually stating to witness after witness over a period of months that he intended to kill Maria Teresa and her mother. This and more information was available to the Sheriff if they had bothered to ask for it and investigate.

7. It is my opinion that had the Sonoma County Sheriff Department followed and observed the State of California Penal Code and its own General Orders it would have arrested Avelino Macias on numerous occasions. As a result, more likely than not he would have been in jail, or on probation and in some form of an intensive treatment program long before Maria Teresa was murdered on April 15, 1996.

8. The above referenced studies demonstrate that the key to deterring and reducing domestic violence homicides is proactive adherence to policy and aggressive investigations and arrests by responding law enforcement as well as coordination with other parts of the criminal justice system. It is my opinion that it is more probable than not that had the Sheriff followed existing state and county laws and arrested the suspect for his continuing stalking and violations of the restraining order in this case, Avelino Macias would have similarly been deterred.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on December 1998 at California

Anne O'Dell