

[INSERT NAME]  
Attorney at Law  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
State Bar No. 00000  
Tel: (831) 000-0000

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
MONTEREY COUNTY

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff/Respondent,	)	No. H000000
	)	
vs.	)	STIPULATED FINAL
	)	STATEMENT
[INSERT NAME],	)	
	)	
Defendant/Appellant.	)	
_____	)	

The People and the Defendant hereby stipulate to a final statement on appeal as specified below.

**GROUND FOR APPEAL**

Any and all grounds for appeal as shown by the record (clerk's and reporter's transcripts) and this stipulated final statement.

**RECORD ON APPEAL**

***A. Reporter's Transcript***

1. Transcript of Second Jury Trial Before The Honorable Jose Velasquez (2 volumes).
2. Motion for New Trial Before the Honorable Jose Velasquez (April 27, 2006) (1 volume).
3. Decision on Motion for New Trial Before the Honorable Jose Velasquez (May 11, 2006) (1 volume).
4. Sentencing Hearing Before the Honorable Jose Velasquez (May 19, 2006) (1 volume).

***B. Clerk's Transcript***

1. Motion for New Trial; Declaration and Memorandum of Points

and Authorities in Support (filed 2/15/06).

2. The People's Response to the Defendant's Motion for New Trial & Declarations of [NAME] and [NAME] (filed April 12, 2006).
3. The District Attorney's Sentencing Memorandum.
4. The Defense Sentencing Memorandum.
5. The instructions requested by the defense and prosecution, and instructions given to the jury by the court.
6. The transcript of the first trial in this case.

#### **ADDITIONAL RECORD FOR CERTIFICATION**

In addition to the aforementioned Reporter's Transcripts, the appellant proposes the following additional facts for settlement by the court:

1. On January 7, 2006, the Saturday before the first day of trial on Monday morning, the prosecutor contacted defense counsel to inform him that [NAME] would not be available for trial. He had been subpoenaed. Previously, the prosecutor had asked if defense counsel would agree to a stipulation regarding the testimony of [NAME], M.D., who testified in the first trial of the case, so that [NAME] would not have to appear. [NAME], a medical doctor, testified in the first trial of this case that he did not observe any physical injuries or bruising to [NAME]'S breast in the morning of the same day that the defendant supposedly assaulted [NAME] injuring her breast. This knowledge was based on the fact that he had a sexual relationship with [NAME]. [NAME] testified that he had a sexual relationship with the complainant [NAME]. Defense counsel refused to stipulate to [NAME]'s testimony.
2. During the prosecutor's cross-examination of the defendant, notwithstanding defense counsel's refusal to stipulate to [NAME]'S testimony, the prosecutor elicited [NAME]'S testimony through the defendant by asking the defendant if he recalled [NAME]'S testimony at a prior proceeding regarding the uninjured condition of [NAME]'S breast.
3. Defense counsel objected, and the court and both counsel held an off-the-record discussion regarding questions asked of the defendant by the prosecutor. Both counsel went to sidebar at the request of defense counsel, who objected to the prosecutor's question regarding [NAME]'S prior testimony, and at side bar, the prosecutor acknowledged that he could not ask the question ("Yeah, you're right. I'm sorry,") and he asked the defendant no other questions about [NAME].
4. Defense counsel did not assign the prosecutor's line of questioning as prosecutorial misconduct or ask for a curative instruction or mistrial. He did

not make the argument because he did not realize it was prosecutorial misconduct until he thought about it later. Further, he did not ask the court to strike the testimony or to instruct the jury to disregard it.

5. After the trial, defense counsel thought about the matter some more and realized that the prosecutor had committed misconduct. He also realized that the jury had heard this improper evidence again when it listened to the tape recording of the defendant's testimony during the requested readback. Thereafter, he drafted a motion for a new trial arguing that the prosecutor committed misconduct.
6. The People submitted a declaration of the prosecutor in opposition to the Motion for New Trial, in which the prosecutor stated that on the Friday before trial, he spoke with [NAME] who informed him she had told [NAME] that he did not need to testify at the trial.
7. Defense counsel requested, and the court gave, a pinpoint instruction on self defense as follows: "If you just find based on the evidence presented that [NAME] was offended, upset or exasperated due to the fact that [NAME] was talking to [NAME] on the phone, that in, in and of itself is not sufficient to justify her striking of [NAME] . If it is found that [NAME] struck [NAME], [NAME] is allowed to defend himself in accordance with the self-defense instructions that will be given."

### **EXHIBITS**

All exhibits will also be considered a part of the appellate record.

Dated: May 2, 2007

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[NAME]

Attorney for Defendant and Appellant

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[NAME]

Attorney for People and Respondent