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9 Attorneys for Defendant
10 JOHANNES MEHSERLE

11 IN THE SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 WILEY M. MANUEL COURTHOUSE

14 **THE PEOPLE OF THE STATE**
15 **OF CALIFORNIA**

16 Plaintiff,

17 v.

18 **JOHANNES MEHSERLE**

19 Defendant.

) Case Number: 547353-7

) **MOTION TO SET BAIL**

) Date: January 30, 2009

) Time: 2:00 p.m.

) Dept: 11

20
21 **INTRODUCTION**

22 The Defendant is a former Police Officer for the Bay Area Rapid Transit District
23 (BART) who first joined the Police Department as an entry-level officer in March 2007. Mr.
24 Mehserle is 27 years old, and, prior to this incident, had suffered no criminal arrests of any kind.

25 He is charged by complaint with one count of murder (Penal Code section 187(a)). The
26 Complaint also charges sentence enhancements related to use and discharge of a firearm under
27 Penal Code sections 12022.5(a), 12022.7(a), 12022.53(b), 12022.53(c), and 12022.53(d).
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1 The Defendant, since his arrest on January 13, 2009, has been confined in protective
2 custody at the Alameda County Jail located at Santa Rita, and is being held without bail.

3 Mr. Mehserle, by way of this motion, requests that the Court set reasonable bail, to
4 which he is absolutely entitled pursuant to Article I section 12 of the California State
5 Constitution, and in accordance with the criteria set forth in California Penal Code section 1275.

6 **BACKGROUND CONCERNING THE DEFENDANT—JOHANNES MEHSERLE**

7 As stated above, Mr. Mehserle is 27 years of age. He is the oldest of three children. He
8 graduated from High School in Napa where he played basketball. Following High School, he
9 attended college in Napa, in Monterey, and at Sonoma State University. He majored in business
10 in Sonoma State University, but developed an interest in police work through a friend who was
11 a police officer.

12 Mr. Mehserle attended the Napa Police Academy. He graduated from the Academy in
13 the top five of his class academically and also performed at a very high level in the physical skill
14 requirements.

15 Before becoming a BART Police Officer, Mr. Mehserle had applied at three different law
16 enforcement agencies. BART was the first of the three agencies to actually offer him a
17 position, which he accepted.

18 Mr. Mehserle enjoys music and has played the electric and acoustic guitars since age 14.
19 He plays blues, jazz and rock and roll.

20 One day after the incident giving rise to these charges occurred, Mr. Mehserle became a
21 father to his first child. He and the baby's mother had planned, and still plan, to marry.

22 Mr. Mehserle's parents have always resided, and continue to reside, in the Bay Area, and
23 have served, and continue to serve, as a great source of ethical guidance, wisdom and inspiration
24 for their children. Both parents are employed.

25 Prior to the incident giving rise to these charges, which occurred at approximately 2:00
26 a.m. on January 1, 2009, Officer Mehserle had not received any internally-generated complaints
27 nor citizen complaints for alleged misconduct for duties performed as a BART police officer.
28

1 Since the incident occurred giving rise to these charges, the attorneys representing the alleged
2 victim, Oscar Grant, have produced two individuals who now have belatedly complained about
3 being mistreated by Officer Mehserle and other BART officers during detentions or arrests.
4 Following his firing of his weapon, Mr. Mehserle submitted to alcohol and drug testing. He had
5 no alcohol or drugs in his system. (Discovery pp. 437-439)

6 **THE BACKGROUND OF THE ALLEGED VICTIM—OSCAR GRANT**

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8 In the extensive discovery provided by the People to the defense on Tuesday, January
9 27th, there is no information concerning the background or other personal information relating to
10 Oscar Grant III. From other information relating to this case which has been posted extensively
11 on the print and electronic media, it has been reported that Mr. Grant was 22 years old and was
12 the father of a four-year-old daughter. He had worked at Kentucky Fried Chicken outlets in
13 Berkeley, San Leandro, and Hayward, and had most recently worked as a butcher as Farmer
14 Joe's Marketplace in Oakland's Diamond District.

15 It has been reported, (but not confirmed through discovery provided to the defense to
16 date) that Grant had been convicted of drug dealing and was sentenced to 16 months in state
17 prison in 2007 after he fled from a traffic stop while armed with a loaded pistol. Grant had been
18 released from prison September 23, 2008. Toxicology testing of Oscar Grant's blood revealed
19 the presence of alcohol 0.02 grams% and the presence of the drug Fentanyl. (Discovery p. 690)

20 Fentanyl is described as a highly addictive, strong narcotic pain reliever.

21 **THE INCIDENT GIVING RISE TO THESE CHARGES**

22 On January 1, 2009, at approximately 2:00 a.m., BART police officers were advised via
23 the police radio about an altercation concerning two groups of passengers on a train which was
24 due to arrive at the Fruitvale BART Station. A number of BART police officers responded to
25 the broadcast and went to the Fruitvale Station. Officer Mehserle and his partner, Officer
26 Woffinden, drove to the Fruitvale Station from the West Oakland Station, where they had dealt
27 with an incident involving individuals who were allegedly armed, and one individual had fled
28 from the police by jumping off the two-story high train platform located at West Oakland.

1 Other officers were already at the Fruitvale BART Station and had several individuals
2 removed from the train and located on the platform near a wall when Officers Woffinden and
3 Mehserle arrived.

4 Shortly after Officer Woffinden and Mehserle arrived, Mehserle began assisting other
5 officers who had detained four individuals, including Oscar Grant III. Those individuals had
6 earlier been directed to be seated on the platform against the wall by BART Police Officer
7 Anthony Pirone and Marysol Domenici.

8 According to reports reviewed for the preparation of this motion, Officer Pirone directed
9 Officer Mehserle to arrest two of the individuals who had not been handcuffed. One of the
10 individuals to be arrested was Oscar Grant, and Officer Pirone's direction to Mehserle was
11 overheard by Grant.

12 Mr. Grant, upon hearing that he was under arrest, attempted to stand up, but was forced
13 to the ground face first. Both Officer Mehserle and Officer Pirone attempted to restrain Mr.
14 Grant and to seek his compliance by ordering him to put his hands behind his back to be
15 handcuffed, but Mr. Grant resisted and refused to submit to handcuffing.

16 Officer Mehserle was pulling at Mr. Grant's right hand and arm, which remained under
17 his torso near his waistband. Mr. Grant had not been searched by any officer for weapons,
18 either prior to his initial detention or after being seated near the wall.

19 According to reports, after Mehserle continued to pull at Grant's hand and arm for a
20 period of time, he stated that he intended to taze Mr. Grant. Mr. Mehserle carried a
21 department-approved "X-26" taser on his uniform equipment belt. The taser was located near
22 the front on his left side, and Mr. Mehserle, who is right handed, had to draw the taser in a
23 "cross draw" fashion.

24 After telling Officer Pirone he was going to taze Grant and yelling at Pirone to "get
25 back," Mehserle, according to witness statements, drew his department-issued firearm, which
26 was located on his right side, pointed the weapon at Mr. Grant's back, and fired a single time.
27 Virtually all witnesses who saw the event or looked to the location where Mehserle was
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1 standing after they heard the gunshot described Mehserle as being in shock and many saw him
2 putting his hands to his head.

3 As stated above, on Tuesday, January 27th, the defense received, for the first time,
4 approximately 50 CDs and 690 pages of “discovery.” A more detailed summary of witness
5 statements, officer statements, or information gathered from reviewing the discovery which
6 relates to the events giving rise to these charges appears below. For the most part, witness
7 statements and/or statements of police officers are reported verbatim from the reports or witness
8 statements recorded on the documents reviewed, and reference is made to the actual page
9 number of the discovery packet.

10 **A. BACKGROUND—OFFICER SAFETY ISSUES**

11 **1. INTERVIEW Statement of BART Officer Marysol Domenici**

12 Domenici told me other calls prior to the officer-involved shooting that were in the back
13 of her mind when she was dispatched to the call at Fruitvale BART Station. Prior to being
14 dispatched to a fight on the Dublin-bound train, Domenici told me she had already heard there
15 were two gun calls other officers had dealt with earlier (about an hour before the shooting).
16 Domenici told me because of the other calls involving guns being recovered off suspects and
17 fights, her main focus was “officer safety.” (Discovery p. 363)

18 **2. Supplemental Report of BART Police Officer K. Franklin**

19 At about 2:00, I was at the Oakland West BART Station dealing with multiple on-going
20 police events that were the result of large numbers of passengers returning from New Year’s
21 Eve events. In the hour or so leading up to 2:00, BART police officers dealt with two separate
22 events that resulted in the recovery of two handguns that were carried illegally by persons within
23 the BART system, along with multiple reports of fights and at least two medical emergencies.
24 (Discovery p. 29)

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1 **B. FIGHT ON THE TRAIN WHICH ARRIVED AT THE FRUITVALE BART STATION**

2 **1. Witnesses Agnes Zafiratos and Dennis Zafiratos**

3 The fight (on the train) started with two individuals and escalated to about 20 people.
4 Both Zafiratos described the fight like a “bar room fight.” Everybody was throwing punches.

5 A. Zafiratos told me the suspects involved in the fight were “hammered and stoned.”
6 She told me “everything smelled like weed.” (Discovery pp. 204-205)

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8 **C. CHAOS ON THE PLATFORM AND SURROUNDING AREA OF THE FRUITVALE BART STATION**

9 **1. Report by Officer J. Woffinden #547**

10 Officer Pirone and Officer Domenici were trying to control the subjects verbally, but to
11 no avail. The males were yelling in the direction of the stopped train, using profanity and racial
12 slurs toward the officers. They were extremely uncooperative and combative in their verbiage
13 and body language. Several of them attempted to get up multiple times and had to be ordered
14 repeatedly to sit down, to which they reluctantly complied. The scene was chaotic and
15 confusing, due to the loud yelling and physical defiance displayed by the group of males.
16 (Discovery p. 134).

17 **2. Interview Statement of Officer Woffinden**

18 At pages 134-135, Officer Woffinden records in his report attempting to deal with a
19 group of individuals standing near the train on the platform who were screaming in the direction
20 of the males that were seated. Domenici was attempting to deal with that group which appeared
21 to be hostile and was also yelling according to his report.

22 “As this was occurring, I could hear the group behind us yelling and screaming. I could
23 also hear Officer Pirone and Officer Mehserle yelling orders at the group they were with.
24 However, based on the number of times Officer Mehserle and Officer Pirone had to yell orders
25 at the subjects, I believe they were experiencing the same type of disobedience as Officer
26 Domenici and I were witnessing. At some point during all of this, one of the subjects threw his
27 cell phone at me, which hit a cement support pillar that was between him and me. The cell
28 phone shattered and did not strike me.” (Discovery p. 136).

1 **3. Interview Statement of Officer Domenici**

2 Domenici stated she has been in other situations like Raiders games and has handled
3 large amount of crowds. But the crowd on New Year’s Eve night was not a typical crowd. She
4 stated everybody on the train was “out of control” and that it was “just too much.” Domenici
5 stated the crowd did not care and was not concerned with authority figures. “They did not care
6 what we represented as law enforcement figures. The people did not care that we were police
7 officers.”

8 Domenici said, “You do what you’re trained to do and try to control the situation. But
9 when people are not listening to you, knowing you are in full uniform and you are in authority,
10 and they keep coming at you...I was afraid. I was afraid for my life and the officers’ lives. I
11 kept thinking ‘I need to protect us.’ ‘I need to protect us.’ There’s all these people coming at us,
12 not listening to us. I was afraid for my life and the other officers there. It just seemed like an
13 eternity. We could not control the scene at all.” (Discovery p. 360)

14 **D. CONDUCT OF GRANT PRIOR TO THE SHOOTING**

15 **1. Statement of Witness Michael Greer, Jr.¹**

16 Greer stated that “[Oscar] probably was struggling a little bit though” before the
17 shooting. (Discovery p. 120).

18 **2. Statement of Witness Pam Caneva**

19 The second, taller male officer was trying to get the subject’s hands out from underneath
20 his stomach. The taller officer was standing over the individual. Caneva heard a “pop.”
21 (Discovery pp. 123-124).

22 **3. Statement of Officer Pirone**

23 “Pirone went to the train operator to inquire if he had detained the persons in the fight.
24 The train operator said the males he had detained were the ones involved in the fight. As Pirone
25 returned from the train operator, he walked toward the detainees. Pirone pointed in the
26 direction of Grant and the male (Jackie Bryson) who was seated to Grant’s left and told the

27 ¹ It should be noted that Michael Greer had to be forcibly removed from the train by Officer Pirone. After being
28 removed from the train, he was taken by Officer Pirone and seated in the vicinity of where Mr. Grant and two
other individuals had been placed against the wall on the platform.

1 other officers on the scene, “these guys are going for 148.” Pirone and Grant got into a verbal
2 exchange. Grant refused to sit down which Pirone did not believe was an unreasonable request.
3 Grant was cursing and saying things like “fake ass cops!”, “bitch!”, “pigs!” Grant was not
4 obeying Pirone’s instructions. Pirone went to arrest Grant who was standing. Pirone forced
5 Grant to a squatting or kneeling position. (Discovery p. 141).

6 **4. Statement of Lynda Kiersted**

7 Kiersted said one subject, the one who got shot, had stood up. The next thing she
8 remembers seeing is the guy who had stood up was now on the ground. Kiersted said his feet
9 were pointing towards her, and his head towards the concrete wall. His hands were underneath
10 him (under his body). Kiersted said she could see the cops were trying to pull his arms out.
11 Kiersted said she could not hear what the officers or the male were saying as there was too
12 much yelling and screaming going on. The big cop (the original one) was towards the head of
13 the subject on the ground, and another cop (taller and thinner) was at the subject’s feet.
14 Kiersted said they kept trying to pull his arms out and the subject was struggling. Kiersted said
15 one of her companions even made the comment, “That guy must be strong, because they can’t
16 get his arms out. “ Kiersted again sat back down and heard a lot of screaming and yelling, and
17 then suddenly a “pop.” (Discovery p. 159)

18 Kiersted said the officers were using a lot of force, but could not pull Grant’s arms out.
19 Kiersted was uncertain as to how long Grant and the officers struggled to get his arms out.
20 Kiersted said Grant never gave up his hands. Kiersted heard a pop, and then saw the Officer
21 was near Grant’s feet put his hands up to his head with a shocked look.

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1 **E. MEHSERLE WARNS OF TASER USE PRIOR TO USE OF HIS FIREARM**

2 **1. Statement of Witness Jackie Bryson, Jr.**¹

3 Bryson stated that Grant was on his stomach when the officers got their knee in his neck.
4 The officer said “I’m going to taze him.” Bryson then stated “I don’t know what happened, all I
5 heard was a pop.” (Discovery p. 117)

6 **2. Statement of Officer Pirone**

7 After Grant went to the ground on his stomach, Pirone said he immediately tried to hold
8 Grant’s head and shoulders down on the ground. Pirone said he told Grant, “Stop resisting,
9 you’re under arrest, put your hands behind your back.” At that time Pirone said he heard
10 Mehserle say, “Put your hands behind your back, stop resisting, stop resisting, put your hands
11 behind your back.” Then Mehserle said, “I’m going to taze him, I’m going to taze him. I can’t
12 get his arms. He won’t give me his arms. His hands are going for his waistband.” Then
13 Mehserle popped up and said, “Tony, Tony, get away, back up, back up.” (Discovery p. 147)

14 Pirone did not know if Grant was armed. Mehserle had fear in his voice. Pirone had
15 never heard Mehserle’s voice with that tone. Mehserle sounded afraid. (Discovery p. 142).

16 **3. Statement of Witness Alike Rogers**

17 Officer Pirone kned Grant in the face—with Grant’s head bouncing off the wall, then
18 throw Grant onto the ground face first. Officer Pirone was kneeling on Grant’s shoulder blade
19 or neck. Officer Pirone appeared to be trying to handcuff Grant. Grant was struggling at this
20 time. It appeared Officer Mehserle was trying to handcuff Grant. Officer Mehserle was
21 standing on one side of Grant. It appeared Officer Mehserle had one of his feet on the back of
22 Grant’s leg, as he was trying to hold Grant down. Either the Officers with Grant or someone on
23 the train said “we’re going to taze you.” Rogers looked away for a spoilt instant and then saw
24 Officer Mehserle with a gun in his hand. Rogers did not see Officer Mehserle draw its gun from
25 its holster. Rogers thought Officer Mehserle’s “gun” was a taser because of the comments “we
26 are going to taze you” and “they’re going to get tazed.” (Discover p. 215)

27 _____
28 ¹ Bryson was seated immediately to the left of Oscar Grant.

1 **F. MEHSERLE'S REACTION IMMEDIATELY FOLLOWING THE FIRING OF HIS WEAPON**

2 **1. Statement of Witness Carlos Reyes Jr.**

3 Reyes said that the officer said "oh shit" after the shot was fired. (Discovery p. 113)

4 **2. Statement of Witness Pam Caneva**

5 The officer who shot the gun had an expression on his face like "holy shit what happened
6 or what did I do, with his hands around his head." Caneva believed the officer also had an
7 expression as "why did my gun go off?" (Discovery p. 124).

8 **3. Statement of Witness Lydia Clay**

9 The officer "put his hand to his head, like to say, oh my God, you know like he probably
10 did not mean to shoot him." (Discovery p. 125).

11 **4. Statement of Witness Robert Mkandawire**

12 Mkandawire stated after the shooting the officer had a facial expression similar to
13 "whoops." (Discovery p. 128).

14 **5. Statement of Witness Alike Rogers**

15 Officer Mehserle put his hands up to his forehead and he appeared to be in shock.
16 Rogers did not see Mehserle put his gun away. Rogers read Officer Mehserle's lips, which
17 appeared to say "Oh my god, Oh my god." The shooting really looked like a total accident.
18 The expression on Officer Mehserle's face was as if, "Oh my god, I can't believe that just
19 happened." (Discovery pp. 216-217)

20 **6. Statement of Witness Christopher Pagan**

21 The Officer who pulled the trigger was in shock. The Officer had a look on his face
22 similar to "Oh my god, I can't believe this happened." Like the deer in the headlights look. "Oh
23 my god." The Officer looked in shock. (Discovery p. 220)

24 **7. Statement of Witness Karina Vargas**

25 Vargas said the Officer who shot Grant had a surprised, dumbfounded look, like he was
26 in shock. "After the shot, he stood there a few seconds trying to take in what had just
27 happened. He had placed his hands to his head." (Discovery p. 493)

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G. MEHSERLE’S STATEMENT TO PIRONE AFTER FIRING HIS WEAPON

1. Statement of Officer Pirone

After the shooting, Pirone was standing away from the shooting location. Mehserle approached Pirone and said, “Tony, I thought he was going for a gun.”

H. MEHSERLE’S TRAINING IN THE USE OF THE TASER

According to department training records, Mehserle attended a six hour class to be trained in the use of the “X-26” taser. On December 3, 2008, Officer Mehserle passed the taser user certification test. (Discovery, p. 38).

Thus, Mehserle had only been “certified” to carry a taser less than one month before this event occurred. The defense has not yet obtained Mehserle’s work records for the month of December, but it is estimated that, at most, Mehserle carried the Department-approved taser during somewhere between eight and twelve shifts before this incident occurred, since the tasers were “passed around” between various BART officers who were qualified, and not every officer carried a taser during each shift he or she worked.

LEGAL ARGUMENT

The Court Must Release the Defendant on Reasonable Bail Pursuant to Article I Section XII of the California Constitution.

Article I, Section XII of the California Constitution provides in pertinent part that, “a person shall be released on bail by sufficient sureties except for:

- (a) Capital crimes when the facts are evidence or the presumption great;
- (b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the Court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to others; or
- (c) Felony offenses when the facts are evident or the presumption great and the Court finds based on clear and convincing evidence that the person has threatened another with

1 great bodily harm and that there is a substantial likelihood that the person would carry out the
2 threat if released.”

3 Based upon a review of information contained in the discovery provided, none of the
4 factors enumerated in Article I, Section XII of the Constitution, which permit the Court to deny
5 bail are present here: this is not a “capital crime;” while the Complaint charges this as a felony
6 act involving violence on another person, there is no indication (and can be none) that “based
7 upon clear and convincing evidence” there is a substantial likelihood that Mr. Mehserle’s release
8 will result in great bodily harm to others; finally, there is no evidence whatsoever that Mr.
9 Mehserle has threatened another with great bodily harm

10 **MR. MEHSERLE IS ENTITLED TO BAIL AS A MATTER OF RIGHT**

11 Penal Code section 1270.5 provides that a defendant charged with a defense punishable
12 with death cannot be admitted to bail “when the proof of his or her guilt is evident or the
13 presumption thereof great.” As stated above, this is not a capital case. Penal Code section 1271
14 provides that Mr. Mehserle is entitled to bail “as a matter of right” for the offense charged in this
15 case.

16 **THE COURT MUST CONSIDER THE FACTORS SET FORTH IN PENAL CODE**
17 **SECTION 1275 IN SETTING A REASONABLE BAIL IN THIS CASE**

18 Penal Code § 1275 requires that the Court, in setting bail, consider the following
19 factors:

- 20 (1) Protection of the public;
21 (2) The seriousness of the offense charged;
22 (3) The previous criminal record of the defendant; and
23 (4) The probability of his or her appearing at the trial or hearing of the case.

24 That section clearly indicates that “the public safety shall be primary consideration.”

25 A brief discussion of the factors enumerated in Penal Code § 1275 follows:

26 **1. Protection of the Public**

1 The “public” has never needed to be protected from Mr. Mehserle in his 27 years of life.
2 He has been, and continues to be, a well-adjusted, mature and educated individual with strong
3 and ethical and personal values, and a commitment to following the law.

4 Despite the fact that he and his family have endured numerous threats of bodily harm,
5 there have been no angry responses, let alone responsive reprisals or threats.

6 At this juncture, Mr. Mehserle simply wishes to be released from a small, windowless
7 room he occupies on a daily basis for 23 hours in order to re-unite with his family and be able to
8 effectively prepare for the defense of this matter.

9 **2. Seriousness of the Offense Charged**

10 The Defendant and Counsel readily acknowledge the seriousness of the offense charged.
11 However, the bulk of the discovery, including witness and officer statements, seem to indicate
12 that this young officer, who carried a taser for only a few shifts prior to this event, may have
13 mistakenly deployed his service pistol rather than his taser, thus negating any criminal intent.

14 **3. The Previous Record of the Defendant**

15 Mr. Mehserle has no prior criminal record of any type.

16 **4. The Probability of His Appearing at the Trial or Hearing of This Case.**

17 Mr. Mehserle was born in Germany, but has been a resident of the Bay Area since he
18 was approximately four years of age. His parents live in the Bay Area and are employed here.
19 The mother of his baby lives in the Bay Area, and Mr. Mehserle plans to find temporary
20 employment in the Bay Area until this case is brought to trial and resolved.

21 **5. The Public Safety as The Primary Consideration**

22 The Court is well aware that there have been “threats” of harm to Mr. Mehserle and to
23 members of his family. He has been labeled a “murderer” in public meetings without a whiff of
24 evidentiary support for such claims. There have been lawless acts of property destruction and
25 violence in an effort to affect Mr. Mehserle’s right to receive fair and objective consideration
26 from the justice system on issues such as this.

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However, despite all of this, there have been no threats or suggestions that Mr. Mehserle, or anyone acting on his behalf or his behest, has threatened public safety or any one of the numerous individuals who have made salacious, unsupported statements concerning his actions which led to the filing of this Complaint.

MR. MEHSERLE IS ENTITLED TO HAVE BAIL SET AT A REASONABLE AMOUNT

Article I, section XII(c), of the Constitution provides that “excessive bail may not be required.” Here, the defense will simply request this Court to set bail at an amount that will ensure Mr. Mehserle’s appearances concerning the charges which have been filed. In truth, there is no question that the factors described and discussed above entitle Mr. Mehserle to be released on his own recognizance, and that such a release would neither jeopardize public safety nor result in Mr. Mehserle absenting himself from future proceedings related to this case. Nevertheless, because defense counsel remains mindful to the severity of the charges in the Complaint and other related circumstances, the defense requests that the Court set bail in the sum of \$100,000.

CONCLUSION

The offense charged is serious. However, even a rudimentary and hasty examination of discovery provided to date indicates that Mr. Mehserle did not act on January 1, 2009 at approximately 2:00 a.m. with malice against Mr. Grant when he fired his weapon. Indeed, witness statements, officer statements, and a wealth of other evidence leads to a very compelling conclusion that Mr. Mehserle did not act with any criminal intent whatsoever during his attempt to arrest and subdue Mr. Grant at the direction of a fellow officer.

Respectfully submitted,

Dated: January __, 2009

RAINS LUCIA STERN, PC

By: Michael L. Rains
Attorneys for Defendant Johannes Mehserle

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