

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

BOSTON MUNICIPAL AND
DISTRICT COURT DEPARTMENTS

DOCKET NOS. 1248CR3898,
1201CR1075, and others

COMMONWEALTH

V.

EVANDO ANANIAS, CHRISTIAN FIGUEROA, AND OTHERS

COMMONWEALTH'S NOTICE OF DISCOVERY

Now comes the Commonwealth in the above-entitled matter and hereby states that it has this day provided copies of the following discovery material to counsel of record for the defendants:

The Commonwealth learned from Draeger, through Brian Shaffer, that after reviewing the Table of breath test results compiled by the consolidated defendants where the IR and EC agreement were outside of the “.008 or 10%, whichever is greater” range, they, with assistance from OAT, began to look into the issue. There is a setting in the instruments that would be set at 38mg/L in order for the agreement to be the “.008 or 10%, whichever is greater” but that the setting was at 60mg/L in two of the instruments from the list and at 30mg/L, a setting more favorable to the subject, in three other randomly chosen instruments not on the list. If set at 60mg/L the IR/EC agreement range would be .0126. As of today's date five instruments have been tested, but more tests will be run on the other instruments moving forward; a plan is being formulated as to how and when that will be done. Based on the Commonwealth's review of the database (2011-October 2015) the only tests falling outside the “.008 or 10% whichever is greater” range are the fifteen listed on the table. The Commonwealth also learned that when the

breath test result is near zero the algorithm is not run to check for the IR and EC agreement being within .008 or 10%.

Any additional discovery material will be provided under separate cover upon receipt of same by the prosecutor.

This 1st day of February, 2017.

Respectfully Submitted
For the Commonwealth,

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DISTRICT ATTORNEY

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